

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALFRED CLARK,
Appellant,
vs.
PHH MORTGAGE; WESTERN
PROGRESSIVE; AND U.S. BANK,
Respondents.

No. 84701-COA

FILED

JAN 13 2023

ELIZABETH A. CROWNS
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Alfred Clark appeals from a district court order directing the issuance of a foreclosure certificate and dismissing a petition for foreclosure mediation assistance. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

After Clark defaulted on his home loan, nonjudicial foreclosure proceedings were initiated against the property, and Clark elected to participate in Nevada's Foreclosure Mediation Program (FMP). Respondents PHH Mortgage, Western Progressive, and U.S. Bank—respectively the servicer, trustee, and beneficiary of the first deed of trust on the property—appeared at the mediation via counsel. However, the parties did not come to an agreement on a loan modification at the mediation, and the mediator later filed a mediator's statement in district court, recommending that the court direct the issuance of a foreclosure certificate and dismiss Clark's petition for foreclosure mediation assistance. Clark did not subsequently challenge the mediator's statement by filing a request for appropriate relief in the district court, which he was authorized to do under FMR 20(2) within 10 days after submission of the mediator's statement. Thus, after the 10-day period elapsed, the district court entered

an order directing the issuance of a foreclosure certificate and dismissing Clark's petition for foreclosure mediation assistance, finding that no timely objection was filed to the mediator's statement. This appeal followed.

In an FMP matter, we give deference to the district court's factual determinations, but we review legal issues de novo. *Pascua v. Bayview Loan Servicing, LLC*, 135 Nev. 29, 31, 434 P.3d 287, 289 (2019).

On appeal, Clark challenges the district court's decision by arguing that respondents failed to comply with the FMP's requirements for various reasons, while respondents counter that he waived these arguments by failing to raise them before the district court. We agree with respondents. Importantly, Clark had an opportunity to raise any objections to the mediator's recommendation by filing a request for appropriate relief in the district court within 10 days after the submission of the mediator's statement. See FMR 20(2). Because Clark failed to avail himself of this opportunity and respondents did not otherwise pursue such relief, the district court could properly direct the issuance of a foreclosure certificate and dismiss Clark's petition for foreclosure mediation assistance, as the mediator recommended. See FMR 20(3) (authorizing the district court to, among other things, dismiss a petition for foreclosure mediation assistance after receiving the mediator's statement and any timely request for appropriate relief).

Although Clark now essentially argues that respondents should have been sanctioned for noncompliance with the FMP's requirements, see *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 304, 300 P.3d 724, 727 (2013) (explaining that the bare minimum sanction for noncompliance with the FMP's requirements is that a foreclosure certificate must not issue), it is well established in Nevada law that "[a] point not urged in the trial

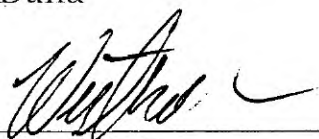
court . . . is deemed to have been waived and will not be considered on appeal." *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Moreover, by forgoing the district court's judicial review of the mediation and raising his arguments concerning respondents' compliance with the FMP's requirements on appeal for the first time outside of the mediation context, Clark is essentially asking this court to resolve factual disputes in the first instance on appeal, which we decline to do. *See Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981) ("[A]n appellate court is not an appropriate forum in which to resolve disputed questions of fact.").

Because Clark has failed to establish that the district court improperly directed the issuance of a foreclosure certificate and dismissed his petition for foreclosure mediation assistance, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 7
Alfred Clark
McCarthy & Holthus, LLP/Las Vegas
Eighth District Court Clerk