

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

QUINNON MARTIN, III; AND
MICHELLE MARTIN,
Appellants,
vs.
THE BANK OF NEW YORK MELLON,
AS SUCCESSOR IN INTEREST, JP
MORGAN CHASE BANK;
NATIONSTAR MORTGAGE/MR.
COOPER; AND QUALITY LOAN
SERVICE CORP.,
Respondents.

No. 85250-COA

FILED

MAY 30 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Quinnon Martin, III, and Michelle Martin (the Martins) appeal from a district court order denying a request for appropriate relief in a foreclosure mediation matter. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

The Martins filed a petition for foreclosure mediation assistance requesting to participate in Nevada's Foreclosure Mediation Program (FMP). After participating in an unsuccessful mediation with respondents, the mediator recommended that an FMP certificate issue. The Martins thereafter filed a petition for judicial review—essentially a request for appropriate relief under FMR 20(2)—in which the only legal argument they presented was the summary contention that “the Lender submitted a defective Deed of Trust and a defective Re-Recorded Deed of Trust for mediation documents resulting in their bad faith at the mediation.” On this

ground, the Martins requested an order denying the issuance of an FMP certificate. The Martins did not explain in their request why they believed the relevant documents were defective, nor did they attach the documents.¹ After further briefing, including an opposition from respondents wherein they explained that the certified copy of the deed of trust they brought to the mediation corrected an error in the legal description of the property contained in the original deed of trust, the district court denied the Martins' request without any specific explanation, and it directed the issuance of an FMP certificate. This appeal followed.

In FMP matters, we defer to the district court's factual findings and review its decision regarding the imposition of sanctions for an abuse of discretion, but we review its legal conclusions de novo. *Jacinto v. PennyMac Corp.*, 129 Nev. 300, 304, 300 P.3d 724, 727 (2013); *Pasillas v. HSBC Bank USA*, 127 Nev. 462, 468, 255 P.3d 1281, 1286 (2011). As

¹The Martins did attach a copy of the mediator's statement, which itself had attached to it a document Quinon had provided to the mediator setting forth various legal arguments and authorities. But that document was improperly attached as an exhibit, *see* EDCR 2.27(e) ("Copies of pleadings or other documents filed in the pending matter, cases, statutes, or other legal authority shall not be attached as exhibits or made part of an appendix."), and did not relieve the Martins of their obligation to present relevant legal argument and authority in their request for appropriate relief. *See* EDCR 2.14(h) ("All memoranda of points and authorities filed in proceedings involving [requests for appropriate relief in the FMP] must be in the form provided for appellate briefs in Rule 28 of the Nevada Rules of Appellate Procedure."); *see also* NRAP 28(a)(10)(A) (requiring that an appellate brief must contain an argument section containing "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies").

relevant to this appeal, “[t]he beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust.” NRS 107.086(5).

On appeal, the Martins repeat their argument that the deed of trust presented at the mediation was “defective” and “void,” as the certified copy provided by respondents included an allegedly unauthorized correction of the legal description of the property that was not in the original deed of trust. However, to the extent the Martins are arguing that a unilateral correction of a scrivener’s error in the legal description² rendered the security interest void, they failed to provide any authority in support of this notion below—while they were represented by counsel—and they fail to provide any cogent explanation in support of it on appeal. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument). Additionally, insofar as the Martins contend that respondents should have brought the original deed of trust with the erroneous legal description to the mediation, they admit that they supplied that document to the mediator, which our supreme court has held is sufficient for compliance with NRS 107.086. *See Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 697, 290 P.3d 249, 254 (2012) (“To make the outcome turn on who brought the documents . . . exalts literalism for no practical purpose.”).

²The original deed of trust referred to “the west 160.00 feet of the northwest quarter,” while the corrected description changes “160.00” to “360.00.”

Finally, to the extent the Martins are arguing that the originally incorrect legal description rendered the deed of trust void, they fail to show the existence of any patent ambiguity in the deed's text that would render it void, as the error at most created a latent ambiguity resolvable by extrinsic evidence, the original instrument contained an accurate street address and parcel number for the property, and the Martins conceded below that the updated legal description is correct. *See Moore v. Moore*, No. 83505-COA, 2022 WL 18002875, at *3-4 (Nev. Ct. App. Dec. 27, 2022) (compiling cases explaining the difference between a latent and a patent ambiguity, and concluding that a legal description of property in a deed is sufficiently certain to preserve the deed's enforceability if it includes an accurate street address but an inaccurate plat description); *see also In re Thompson*, 799 S.E.2d 658, 663 (N.C. Ct. App. 2017) (rejecting appellants' argument that a deed of trust was void because it erroneously referred to a "Section II-C" in the legal description of the property instead of "Section III-C," as this was "merely a scrivener's error and create[d] only a latent ambiguity in the description of the property"); *ABN AMRO Mortg. Grp. v. S. Sec. Fed. Credit Union*, 372 S.W.3d 121, 131 (Tenn. Ct. App. 2011) (holding the beneficiary of a deed of trust retained its lien priority where the document contained "a mere scrivener's error concerning the lot number" and correctly identified the property by its address and parcel number).

Based on the foregoing, the Martins have failed to demonstrate any basis for reversal, and we affirm the district court's order denying their

request for appropriate relief and directing the issuance of an FMP certificate.

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 7
Michelle Martin
Quinnon Martin, III
McCarthy & Holthus, LLP/Las Vegas
Eighth District Court Clerk

³Although the Martins present additional arguments on appeal, including challenges to other documents underlying respondents' authority to negotiate at the mediation and concerning the recording of the deed of trust, those issues were not properly raised below and are therefore waived. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").