

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASEY ZIMMERMAN,
Appellant,
vs.
SAXON MORTGAGE SERVICES, INC.,
Respondent.

No. 58211

FILED

MAR 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Anderson*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review in a foreclosure mediation action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Following an unsuccessful mediation conducted under Nevada's Foreclosure Mediation Program (FMP), appellant Casey Zimmerman filed a petition for judicial review with the district court. Zimmerman contended that respondent Saxon Mortgage Services, Inc.'s conduct was sanctionable because it failed to comply with the FMP's statutory requirements. See NRS 107.086(4)-(5). The district court denied Zimmerman's petition finding that although Saxon failed to provide the documentation required by NRS 107.086(4), it negotiated in good faith and possessed the requisite authority to negotiate a loan modification. Therefore, the district court ordered the issuance of a foreclosure certificate.¹

¹The district court, however, imposed a \$2,500 fine payable to Washoe Legal Services against Saxon for its violation of NRS 107.086(4). Although we reverse the district court order, we note that a monetary sanction in an FMP judicial review proceeding normally should be payable to the opposing party.

We reverse.² Because the parties are familiar with the facts and procedural history in this case, we do not recount them further except as is necessary for our disposition.

Standard of review

We review a district court's factual determinations deferentially, Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (a "district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence"), and its legal determinations de novo, Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003). Absent factual or legal error, the choice of sanction in an FMP judicial review

²Saxon contends that because the district court did not hold an evidentiary hearing regarding the foreclosure mediation, this court does not have sufficient evidence upon which to grant Zimmerman's appeal. However, under the Foreclosure Mediation Rules (FMRs), the district court can hold a hearing to the extent that it deems necessary. The documents submitted to the district court demonstrate that Saxon did not provide an original or certified copy of the deed of trust, the mortgage note, and all assignments of the deed of trust. Thus, this court has sufficient evidence to hear the appeal.

Saxon also argues that because Zimmerman failed to serve the proper parties, the district court should have dismissed the petition for judicial review. Zimmerman sent the petition for judicial review to the parties listed as the lender's attorney and trustee in the mediator's statement. Further, Saxon agreed to a 30-day extension in order to prepare for arguments in this matter. Therefore, we conclude Saxon had notice and a reasonable opportunity defend, and the district court thus did not err in failing to dismiss the petition for judicial review based on Zimmerman's failure to serve Saxon. See Orme v. District Court, 105 Nev. 712, 715, 782 P.2d 1325, 1327 (1989) ("The primary purpose underlying the rules regulating service of process is to insure that individuals are provided actual notice of suit and a reasonable opportunity to defend.").

proceeding is committed to the sound discretion of the district court. Pasillas v. HSBC Bank USA, 127 Nev. ___, ___, 255 P.3d 1281, 1287 (2011).

The district court abused its discretion in ordering the issuance of a foreclosure certificate

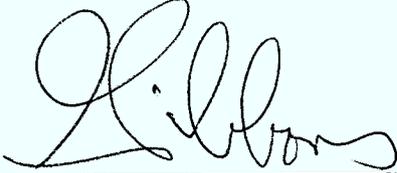
To obtain a foreclosure certificate, a deed of trust beneficiary must strictly comply with four requirements: (1) attend the mediation, (2) participate in good faith, (3) bring the required documents, and (4) if attending through a representative, have a person present with authority to modify the loan or have access to such a person. NRS 107.086(4)-(5); Leyva v. National Default Servicing Corp., 127 Nev. ___, ___, 255 P.3d 1275, 1279 (2011) (concluding that strict compliance with these requirements is necessary).

Zimmerman argues on appeal that Saxon failed to produce the required documents at the mediation. The trustee or beneficiary of the deed of trust must provide at the foreclosure mediation “the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note.” NRS 107.086(4); see also FMR 11(3)(a). After reviewing the record, we conclude that Saxon did not provide an original or certified copy of the deed of trust, the mortgage note, and each assignment of the deed of trust at the foreclosure mediation. Therefore, Saxon failed to strictly comply with NRS 107.086(4)’s requirements, and the district court thus abused its discretion in ordering the issuance of a foreclosure certificate.³ See Leyva v.

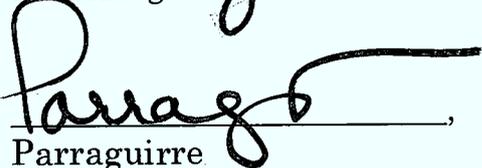
³Because we reverse on this basis, we do not address the parties’ remaining arguments.

National Default Servicing Corp., 127 Nev. ___, ___, 255 P.3d 1275, 1279, 1281 (2011). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁴


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Patrick Flanagan, District Judge
Mark L. Mausert
Cooper Castle Law Firm, LLC
Pite Duncan, LLP
Washoe District Court Clerk

⁴We submit this appeal for decision without oral argument. NRAP 34(f)(1).