IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENN GALVAN,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 76214

FILED

SEP 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.[1]

It is so ORDERED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Hon. Lynne K. Simons, District Judge
Hon. Scott N. Freeman, District Judge
Glenn Galvan
Akerman LLP/Las Vegas
Washoe District Court Clerk

[1]The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GLENN GALVAN,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 76214-COA

FILED

JUL 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Glenn Galvan appeals from various orders in consolidated district court cases. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.[1]

In 2012, respondent Nationstar Mortgage, LLC (Nationstar), brought a judicial foreclosure action against Galvan, and Galvan countersued asserting contract and tort claims (the 2012 action). Then, in 2015, Galvan commenced a separate proceeding in which he asserted contract, tort, and quiet title claims against, as relevant here, Nationstar (the 2015 action). The 2012 and 2015 actions were later consolidated.

Nationstar moved to dismiss Galvan's claims in the 2015 action, arguing that Galvan was required to assert them as compulsory counterclaims in the 2012 action. Galvan opposed that motion, asserting that the 2012 and 2015 actions were merged into a single action when they

[1]Judge Lynn K. Simons entered each of the orders challenged in this appeal with the exception of the order denying Galvan's motion to disqualify her as the presiding judge in the underlying proceeding, which was entered by Chief Judge Scott N. Freeman. Although Galvan's notice of appeal designates the order denying his motion to disqualify Judge Simons as being challenged on appeal, he does not present any specific argument with respect to that decision, and we therefore affirm it.

20-25650

were consolidated, and he further sought to amend his complaint in the 2015 action to include all of his claims and counterclaims from the two cases. The district court concluded that the 2012 and 2015 actions retained their separate identities despite being consolidated, that Galvan's claims in the 2015 action arose from the same transaction and occurrence involved in the 2012 action, and that Galvan was therefore required to assert them as compulsory counterclaims in the 2012 action. Thus, the district court granted Nationstar's motion to dismiss the 2015 action and denied Galvan's request to amend his complaint in that action. The district court also denied Galvan's request to reconsider its dismissal order, reasoning that he did not raise any new issues of law or fact relevant to the court's decision.

Meanwhile, in the 2012 action, a dispute arose between the parties concerning whether Nationstar was required to produce the original promissory note and deed of trust for the property. While the discovery commissioner recommended that Nationstar be required to produce those documents, the district court agreed with Nationstar's objection to that recommendation and thereby denied Galvan's underlying motion to compel, reasoning that Galvan's claims did not relate to the authenticity of those documents, but instead, concerned their chain of title. And although Galvan also sought to obtain the original note and deed of trust by way of a motion for a mandatory injunction, the district court construed the filing as a motion for reconsideration of its prior discovery decision, which the court denied because Galvan failed to present any new issues of law or fact.

At approximately the same time, the parties filed competing motions for summary judgment, and Galvan moved to amend his pleading in the 2012 action to add additional parties and his claims from the 2015 action, among others. The district court granted summary judgment in Nationstar's favor, finding that it held the note and deed of trust and was

entitled to enforce those instruments and that Galvan failed to oppose Nationstar's various arguments against his affirmative defenses and counterclaims. And in light of that decision, the district court concluded that Galvan's motion to amend was moot and denied it.

Galvan sought relief from the summary judgment under NRCP 52, 59, and 60, which the district court denied, concluding that NRCP 52 and 59 were inapplicable absent a trial and that Galvan did not otherwise show that relief was warranted under NRCP 60. Meanwhile, Nationstar moved for Galvan to be declared a vexatious litigant, and the district court granted that motion, directing that Galvan submit certain matters to the court for pre-filing approval going forward.

Lastly, the district court entered a final judgment in the 2012 action, which set forth the amount due to Nationstar and authorized Nationstar to proceed with its foreclosure sale. This appeal followed.

On appeal, Galvan challenges orders from both the 2012 and 2015 actions. We begin by addressing Galvan's challenges to the orders from the 2012 action, as our resolution of those challenges informs our analysis of Galvan's challenges to the orders from the 2015 action.

Orders sustaining Nationstar's objection to the discovery commissioner's recommendation and denying Galvan's motion for a mandatory injunction

With respect to the 2012 action, Galvan initially argues that the district court should have overruled Nationstar's objection to the discovery commissioner's recommendation that Nationstar be required to produce the original note and deed of trust, citing NRS 104.3301 and *Leyva v. National Default Servicing Corp.*, 127 Nev. 470, 255 P.3d 1275 (2011). But neither those authorities, nor Nevada's judicial foreclosure statutes, NRS 40.430 *et seq.*, impose any obligation on a foreclosing party to produce original loan documents in the context of a judicial foreclosure action. Moreover, Galvan was only entitled to obtain discovery "relevant to the subject matter" of the

underlying proceeding. NRCP 26(b)(1);[2] *In re Raggio Family Tr.*, 136 Nev., Adv. Op. 21, 460 P.3d 969, 973 (2020). And the district court determined that the original note and deed of trust were not relevant since Galvan did not challenge the authenticity of the copies of the documents that Nationstar produced. Because Galvan does not address that determination on appeal, he has waived any challenge thereto. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). As a result, Galvan fails to demonstrate that the district court abused its discretion by rejecting the discovery commissioner's recommendation and thereby denying his motion to compel production of the original note and deed of trust. *Raggio Family Tr.*, 460 P.3d at 973 (providing that the district court's discovery orders will not be disturbed absent a clear abuse of discretion).

While Galvan also challenges the denial of his motion for a mandatory injunction, which the district court construed as a motion for reconsideration of its prior discovery decision, he relies on his argument concerning NRS 104.3301 and *Leyva* rather than disputing the district court's finding that he did not raise any new issues of law or fact in support of his motion. *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (explaining that reconsideration is only warranted "in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached"); *see also Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. As a result, Galvan fails to demonstrate that

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[2]The NRCP were amended effective March 1, 2019. *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, Dec. 31, 2018). Because all of the challenged orders in this case were entered before March 1, 2019, we cite the prior version of the NRCP herein.

the district court abused its discretion by refusing to reconsider its prior discovery decision. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (reviewing a district court's decision on a motion for reconsideration for an abuse of discretion).

Orders denying Galvan's motion for summary judgment, granting Nationstar's motion for summary judgment, and denying Galvan's motion to amend his pleading in the 2012 action

As to the summary judgment in favor of Nationstar, Galvan argues that the district court's decision was improper because Nationstar did not prove that it possessed the original note and deed of trust and because one of the assignments that Nationstar produced to establish the chain of title for the deed of trust was invalid.[3] This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

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[3]Although Galvan also contends that the entry of summary judgment for Nationstar improperly set aside certain consent orders involving Nationstar's predecessors in interest, among others entities, we decline to consider that contention, as it is not supported by any explanation with respect to how the district court's decision in this judicial foreclosure action affected those consent orders, which concerned the internal management of the entities involved. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider issues that are not supported by cogent argument).

To begin, Galvan's assertion that Nationstar failed to prove that it possessed the original note and deed of trust fails, as Nationstar supported its motion for summary judgment with a declaration that it possessed those instruments, and Galvan did not produce any evidence to the contrary to raise a genuine issue of material fact. *See* NRS 53.045 (providing that matters may be established by way of unsworn declarations signed by the declarant under penalty of perjury); *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (discussing the parties' burdens of proof in the summary judgment context). As to the purportedly invalid assignment, Galvan's argument that the district court erred in concluding that he lacked standing to challenge the assignment likewise fails. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *see also Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (providing that standing is a question of law subject to de novo review).

Indeed, even if Galvan is correct that the assignment from the original beneficiary, Mortgage Electronic Registration System, Inc. (MERS), to Nationstar's predecessor in interest was executed with an outdated corporate seal and without MERS' authorization, those defects would merely render the assignment voidable because it was subject to ratification by MERS. *See* Restatement (Second) of Contracts § 7 (Am. Law Inst. 1981) (explaining that a voidable contract is one in which a party has the power to avoid or ratify the legal obligations imposed by it); Restatement (Third) of Agency § 4.03 (Am. Law Inst. 2006) (recognizing that a principal may ratify the acts of a person purporting to be its agent); *see also Antony v. United Midwest Sav. Bank*, No. H-15-1062, 2016 WL 914975, at *3 (S.D. Tex. Mar. 10, 2016) (concluding that a contract executed on behalf of MERS by a person who lacked authority to do so would merely be voidable). And

because the assignment is merely voidable, Galvan lacks standing to challenge it. *see Wood v. Germann*, 130 Nev. 553, 556-57, 331 P.3d 859, 861 (2014) (providing that homeowners lack standing to challenge voidable deed of trust assignments), which despite his contentions to the contrary, is not a due process violation. *See Malfitano v. Cty. of Storey*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (explaining that a plaintiff asserting a procedural due process claim must demonstrate that he or she suffered a deprivation of a protected liberty or property interest); *Yvanova v. New Century Mortg. Corp.*, 365 P.3d 845, 856 (Cal. 2016) (reasoning that, when a homeowner challenges a voidable assignment, the homeowner asserts rights belonging to the parties to the assignment rather than the homeowner).

Notwithstanding the foregoing, Galvan further contends that the district court erred in granting summary judgment for Nationstar because it based its decision on the answer and counterclaim that he filed in 2012 even though he sought to amend that pleading by adding certain parties and the claims from his 2015 action, among others. But the proposed amended pleading was primarily based on his allegation that the MERS assignment was invalid, which fails for the reasons discussed above. And while Galvan presented several other allegations in his proposed amended pleading, they likewise do not support viable claims for relief.[4]

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[4]Given that the claims in Galvan's proposed amended complaint are not viable, his complaint in the 2015 action likewise fails since it consisted entirely of claims that he attempted to add to the 2012 action by way of the proposed amended complaint. Insofar as Galvan contends that he is nevertheless entitled to relief from the dismissal order regarding the 2015 action since Nationstar never filed an answer, his argument is unavailing because Nationstar timely moved to dismiss the case rather than filing an answer, as it was permitted to do. *See* NRCP 12(a)(4)(A), (b) (providing that a motion for NRCP 12(b)(5) relief must be filed before an answer and that an answer need not be served until 10 days after notice of the court's denial

Thus, because Galvan's proposed amendment was futile, the district court did not abuse its discretion in denying his motion to amend, and Galvan therefore fails to demonstrate that the district court erred in granting summary judgment in Nationstar's favor. *See Gardner v. Eighth Judicial Dist. Court*, 133 Nev. 730, 732-33, 405 P.3d 651, 654 (2017) (explaining that district court orders denying motions to amend are reviewed for an abuse of discretion and that granting such motions is inappropriate if amendment would be futile); *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Order denying Galvan's motion for relief under NRCP 52, 59, and 60

Turning to Galvan's motion for relief under NRCP 52, 59, and 60, he does not challenge the district court's determination that NRCP 52 and 59 are inapplicable under the circumstances of this case, and therefore, we limit our analysis to whether Galvan was entitled to relief under NRCP 60. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. In this respect, Galvan argues that relief is warranted because he supported his motion with evidence, which was purportedly newly discovered, showing that an unrecorded assignment of the deed of trust is missing from the record. But although the documents identified by Galvan reflect a transfer of the servicing rights for his home loan, Galvan's assumption that the transfer of servicing rights is necessarily indicative of an assignment of the deed of trust is spurious, as servicers are distinct from beneficiaries. *See Cervantes*

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of the motion). To the extent that Galvan maintains that he should have been permitted to amend his complaint in the 2015 action by adding his counterclaims from the 2012 action, his argument fails since he has not shown, in the context of the summary judgment order discussed above, that the counterclaims are viable. Thus, because Galvan is not entitled to relief with respect to any of the challenged decisions in the 2015 action, we need not address the parties' remaining arguments concerning that district court case.

v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1038-39 (9th Cir. 2011) (discussing the MERS system and explaining that the beneficiary is entitled to repayment of the loan, whereas a servicer "collects payments from the borrower, sends payments to the lender, and handles administrative aspects of the loan"). Consequently, we conclude that Galvan has not demonstrated that the district court abused its discretion in denying his motion for relief under NRCP 60. *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018) (reviewing a district court order denying NRCP 60(b) relief for an abuse of discretion).

Order declaring Galvan a vexatious litigant

As to the order declaring Galvan a vexatious litigant, he initially argues that relief is warranted because the district court never warned him that he was being vexatious. But although the district court did not specifically warn Galvan that he was being vexatious, he had the opportunity to brief the vexatious litigant issue and to argue his position at a hearing before the district court, which was sufficient to satisfy the requirement that he receive notice and an opportunity to be heard before being declared a vexatious litigant. *See Jordan v. State*, 121 Nev. 44, 60-62, 110 P.3d 30, 42-44 (2005) (setting forth the requirements that must be satisfied before entry of a vexatious litigant order), *overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008). While Galvan contends that the district court's findings concerning the history of the underlying proceeding and related cases was either inaccurate or incomplete, we conclude that the court's detailed recitation of the history of the underlying proceeding created an adequate record of the court's reasons for concluding that a

restrictive order was warranted.[5] *Id.* at 60-61, 110 P.3d at 43. We likewise conclude that the district court made sufficient findings with respect to the harassing nature of Galvan's conduct in this case and the undue delay it created, *see id.* at 61, 110 P.3d at 43, despite Galvan's contention that his filings were necessitated by Nationstar's rule violations and the district court's incorrect rulings, which fails for the reasons discussed above. And although Galvan contends that the restrictions in the vexatious litigant order violate his constitutional rights because they are too broad, we conclude that the district court properly imposed a narrow restriction on Galvan's ability to file any new actions or motions concerning the subject property, the related loan documents, or the various entities that have been involved with those documents, and thereby avoided any constitutional concerns. *Id.* at 61-62, 110 P.3d at 43-44. Thus, given the foregoing, we conclude that Galvan fails to demonstrate that the district court abused its discretion by declaring him a vexatious litigant.[6] *See id.* at 62, 110 P.3d at 44 (reviewing vexatious litigant orders for an abuse of discretion).

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[5]We recognize that the district court incorrectly found that Galvan filed an untimely motion to amend his pleading in the 2012 action when the court never established a deadline for the parties to seek leave to amend their pleadings, but conclude that this mistake was harmless, as the court's remaining findings support its decision to declare Galvan a vexatious litigant. *See* NRCP 61 (requiring the court, at every stage of a proceeding, to disregard errors that do not affect a party's substantial rights).

[6]Galvan also moved to strike Nationstar's vexatious litigant motion and to admonish its counsel, but the district court denied the motion, reasoning that it merely reiterated Galvan's arguments in opposition to being declared a vexatious litigant and that those arguments should be addressed during the vexatious litigant hearing. Galvan disputes the propriety of this decision on appeal, but he fails to address the underlying

Final Judgment

Lastly, although Galvan challenges the final judgment in the 2012 action, he does not set forth any challenges specific to the decision, but instead relies on his various arguments concerning the interlocutory orders discussed above. And because those arguments fail for the reasons set forth above, Galvan has not demonstrated that relief is warranted in this regard.

Thus, given the foregoing, we affirm the final judgment in the 2012 action along with each of the challenged interlocutory orders in that case as well as the order dismissing the 2015 action and each of the challenged post-judgment orders in that case.

It is so ORDERED.[7]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Glenn Galvan
Akerman LLP/Las Vegas
Washoe District Court Clerk

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reasoning for the decision and has thereby waived his challenge. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3

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