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Summary of Wells Fargo Bank, N.A. v. O'Brien, 129 Nev. Adv. Op. 71

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CIVIL PROCEDURE: FINALITY OF JUDICIAL REMAND TO MEDIATION

Summary

The Court determined whether a district court order for judicial review of foreclosure mediation and remanding for further mediation is final and appealable, or whether it is not final and not appealable.

Disposition

NRAP² requires finality of a decision before the Court can undertake its review. Denial of review is proper for cases where the district court remanded to an administrative agency unless the order constitutes a final judgment on the merits and remands merely for collateral tasks. The same is true for orders arising from, and remanding to, the foreclosure mediation program.

Factual and Procedural History

Homeowners, Dewey and Renee O'Brien, elected to participate in the foreclosure mediation program allowed under state law.³ Along with a representative from Wells Fargo, the parties agreed to stall foreclosure proceedings for three months while the O'Briens sought a loan modification. Several months later, the O'Briens petitioned the district court for judicial review, asserting that Wells Fargo breached their agreement. The district court found that Wells Fargo had violated the agreement and granted the O'Briens' petition for judicial review, awarding them sanction and attorneys fees, and ultimately directing Wells Fargo to participate in and pay for additional mediation. Wells Fargo appealed.

The Court ordered Wells Fargo to demonstrate jurisdiction. Wells Fargo argued that the order resolved all of the issues before the district court and thus was final and appealable. The O'Briens countered, arguing the order did not resolve the ultimate question regarding their home, and was therefore not appealable.

Discussion

The Court⁴ only reviews decisions that are final so as to promote judicial economy and efficiency by avoiding piecemeal appellate review. The Court reasoned that deferring appellate review until the completion of significant ongoing proceedings not only avoids the possibility of considering two appeals but "also leaves open the possibility that no appeal will be taken in the event the proceedings on remand satisfy all parties."⁵

¹ By Patrick Opdyke.

² Nev. R. App. P. 3A(b)(1).

³ Nev. Rev. Stat. 107.086 (2013).

⁴ J. Cherry authored the Court's opinion, in which C.J. Pickering, J. Gibbons, J. Parraguirre, J. Douglas, and J. Saitta join.

⁵ *Pueblo of Sandia v. Babbitt*, 231 F.3d 878, 880 (D.C. Cir. 2000).

Unless remand to an administrative agency or remand for further mediation is merely collateral to a final judgment, the order for remand is not itself final. In the case of remand for further mediation, the additional proceeding will readdress the merits of foreclosure matters, and still allow the parties to petition for judicial review of those proceedings. As such, a remand for further mediation is not a final resolution of the matter, and thus not appealable.⁶

Conclusion

Applying NRAP to disqualify Wells Fargo's appeal is proper here because the order from which Wells Fargo attempted to appeal is not final. The district court ordered the parties to commence further mediation which would address much of the dispute, and thus was not collateral to a final judgment. Thus the district court's order itself was not a final judgment and could not be appealed.

⁶ J. Hardesty registered a dissent, arguing that the district court did resolve all the substantive issues before it, that the remand for further mediation was merely collateral to the disposition, and that the issues on remand are potentially distinct from those involved in the original mediation. The dissent further posits that the majority's decision invites infinite back-and-forth between the mediation process and the district court without any possibility of appellate review.