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Summary of Daane v. Dist. Ct., 127 Nev. Adv. Op. 59

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Daane v. Dist. Ct., 127 Nev. Adv. Op. 59 (September 29, 2011)[1]

CIVIL PROCEDURE AND ADR – WRIT RELIEF

Summary

A writ of prohibition precluding further proceedings by Nevada's Foreclosure Mediation Program was denied because the petitioner had an adequate remedy in the ordinary course of law.

Disposition/Outcome

The Court denied the petitioner's writ of prohibition in favor of allowing the petitioner to file a petition for judicial review after proceedings with the Foreclosure Mediation Program finalized. The Court concluded that writ relief was unnecessary because the petitioner's ability to appeal was an adequate remedy in the ordinary course of law.

Factual and Procedural History

Petitioner William Daane ("Daane") refinanced the mortgage on his residence and eventually defaulted on the loan. CR Title Services, Inc. ("CR"), the trustee of the deed of trust, filed a notice of default. Daane chose to participate in Nevada's Foreclosure Mediation Program ("FMP").[2] However, the mediator declared that CitiMortgate, Inc. ("CitiMortgage"), the beneficiary of the deed of trust, acted in bad faith at the mediation because CitiMortgage sent a representative with no authority to negotiate and did not provide necessary documents. Daane filed a petition for judicial review, asserting that CitiMortgage acted in bad faith. The District Court concluded that CitiMortgage acted in bad faith; as a result, the Court denied CitiMortgage a letter of certification. CR filed a second notice of default on Daane's mortgage, and Daane chose to participate in the FMP again. Daane then filed a writ of prohibition with the District Court to preclude further proceedings with the FMP.

Discussion

Chief Justice Saitta wrote for the unanimous Court, hearing the case en banc. The Court began by examining whether or not it should exercise its discretion to entertain the petition. Daane argued, based on NRS 107.068 and the Foreclosure Mediation Rules, that CitiMortgage could not continue the foreclosure through a second default notice because it previously acted in bad faith and was denied a letter of certification.[3] However, the Court stated that a writ of prohibition "may be issued only . . . where there is not a plain, speedy and adequate remedy in the ordinary course of law."[4] The ability to appeal was an adequate remedy, thereby making a writ of prohibition unnecessary.[5] The Court stated that it "ha[s] consistently held that the

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[1] By Michelle Newman.
[2] *See* NEV. REV. STAT. § 107.086 (2007) (Foreclosure Mediation Rules).
[3] *Id.*
[4] NEV. REV. STAT. § 34.330 (2007).
[5] *See* Pan. V. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

existence of an appeal is an adequate remedy at law barring writ relief."[6] The Court confirmed it had proper jurisdiction over appeals relating to foreclosure mediation,[7] and stated Daane may file an appeal after he completes his participation in the FMP for a second time. [8]

Conclusion

An appeal after a finalized decision by the Foreclosure Mediation Program is an adequate remedy in the ordinary course of the law, such that writ relief is unnecessary.

[6] Daane v. Dist. Ct., 127 Nev. Adv. Op. 59 at 4 (September 29, 2011).
[7] *See* Leya v. Nat'l Default Serv. Corp., 127 Nev. __, __ n.3, 255 P.3d 1275, 1277 n.3 (2011); Pasillas v. HSBC Bank U.S., 127 Nev. __, 255 P.3d 1281 (2011).
[8] *See* NEV. R. APP. P. 3A(b)(1).