

NATIONSTAR MORTGAGE LLC

v.

KRISTINE GILLESPIE et al.

Submitted on Briefs April 24, 2019
Decided May 2, 2019

Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Nationstar Mortgage LLC appeals from a judgment of the District Court (Lewiston, *Lawrence, J.*) entered in favor of Kristine Gillespie, after a bench trial on Nationstar's foreclosure complaint.¹ Nationstar contends that the court erred by granting Gillespie's motion to reconsider its order continuing the trial, and also by granting Gillespie's motion for judgment as a matter of law.

Contrary to Nationstar's contentions, Gillespie's motion for reconsideration was procedurally proper, and the circumstances of this case establish that the motion was not merely an effort to reargue issues that were or could have been presented at trial. *See* M.R. Civ. P. 7(b)(5); *Shaw v. Shaw*, 2003 ME 153, ¶¶ 7-9, 839 A.2d 714. Because Nationstar's lack of preparation for trial did not justify granting a motion for continuance, and Nationstar did not otherwise attempt to meet its burden of showing sufficient grounds for delaying the trial, we discern no abuse of discretion in the court's judgment

¹ In addition to Gillespie, Glenda Demers is a named defendant in this matter. She has not participated in this appeal. For the sake of clarity, Gillespie will be referred to individually. Gillespie cross-appealed on the issue of sanctions, but expressly waived the issue in her brief.

reconsidering its order continuing the trial. See *Gammon v. Boggs*, 2018 ME 152, ¶ 9, 196 A.3d 900; *Fox Island Granite Co. v. Am. Granite Mfrs., Inc.*, 2006 ME 14, ¶¶ 4-8, 890 A.2d 700; *Shaw*, 2003 ME 153, ¶ 7, 839 A.2d 714.

Neither do we discern any error in the court's granting of Gillespie's motion for judgment as a matter of law pursuant to M.R. Civ. P. 50(d). The court found—and Nationstar does not dispute—that Nationstar's only witness at trial was not competent to lay the foundation necessary to introduce exhibits pursuant to the business records exception. See M.R. Evid. 803(6); *Beneficial Me. Inc. v. Carter*, 2011 ME 77, ¶ 14, 25 A.3d 96. Nationstar was thus unable to introduce evidence related to—among other things—the amount due on the loan, which is a necessary element of proof. See *Nationstar Mortg., LLC v. Halfacre*, 2016 ME 97, ¶ 4 n.2, 143 A.3d 136; *Homeward Residential, Inc. v. Gregor*, 2015 ME 108, ¶ 14 n.11, 122 A.3d 947; *Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶¶ 18, 24-27, 96 A.3d 700. Accordingly, Gillespie was entitled to judgment as a matter of law.

The entry is:

Judgment affirmed.

Duncan A. Edgar, Esq., Sandelands Eyet LLP, Bedminster, New Jersey, for appellant Nationstar Mortgage LLC

Thomas A. Cox, Esq., Portland, for appellee Kristine Gillespie