DIVISION ONE
FILED: 06/18/2013
RUTH A. WILLINGHAM, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

	) 1 CA-MH 12-0094
	)
	) DEPARTMENT E
	)
IN RE MH2012-003236	) **MEMORANDUM DECISION**
	) (Not for Publication
	) - Rule 28, Arizona
	) Rules of Civil
	) Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. MH2012-003236

The Honorable Susan G. White, Commissioner

AFFIRMED

William G. Montgomery, Maricopa County Attorney — Phoenix
By Anne C. Longo, Deputy County Attorney
and Bruce P. White, Deputy County Attorney
Attorneys for Appellee

Marty Lieberman, Maricopa County — Phoenix
Office of the Legal Defender
By Cynthia Dawn Beck, Deputy Legal Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 After conducting an evidentiary hearing, the superior court found by clear and convincing evidence Appellant was, as a result of a mental disorder, persistently or acutely disabled,

in need of psychiatric treatment, but unwilling and unable to accept voluntary treatment. Accordingly, the court ordered Appellant to undergo a combination of inpatient and outpatient treatment ("treatment order").

¶2 On appeal, Appellant argues we should vacate the treatment order because, contrary to Arizona Revised Statute ("A.R.S.") section 36-539(B) (Supp. 2012), Appellant's father, D.B., called by Appellee, petitioner in the superior court, as an acquaintance witness, was not "acquainted with the patient at the time of the alleged mental disorder." We disagree.

¶3 First, as an initial matter, Appellant raised no objection to the sufficiency of D.B.'s testimony as an acquaintance witness. Normally, we do not consider arguments raised for the first time on appeal except under exceptional circumstances. *In re MH2008-002659*, 224 Ariz. 25, 27, ¶ 9, 226 P.3d 394, 396 (App. 2010). In our view, this is not an exceptional circumstance warranting relief from this waiver rule. The reason is simple -- Appellant's failure to object to the sufficiency of D.B.'s testimony at the hearing prejudiced Appellee as Appellee points out on appeal. If Appellant's counsel had raised the issue at the hearing, then "counsel for Petitioner could have further examined [D.B.] or called another

witness to testify, and the issue could have easily been addressed by the [superior] court."

¶4 Second, even if not waived, Appellant's argument is not well taken. As we explained in *In re MH2008-002596*, 223 Ariz. 32, 36, ¶ 17, 219 P.3d 242, 246 (App. 2009), A.R.S. § 36-539(B) does not "impose a specific length of time over which the acquaintance or familiarity with the patient must take place or the manner in which the witness's familiarity with the patient must be acquired." Instead, the statute focuses on the nature and relevance of the witness's testimony. The acquaintance witness must have personal and relevant information as to whether the patient is suffering from a mental disorder. *Id*. at 36, ¶¶ 16-17, 219 P.3d at 246.

¶5 Here, D.B.'s testimony met these requirements. As Appellant's father, D.B. had known Appellant for at least 30 years. He was familiar with Appellant's behavior based on his own first-hand personal experiences with Appellant. As of the date of the hearing, D.B. had spoken or met with Appellant at least four times over the prior ten months. Although D.B. was unable to identify the precise dates of these communications, he explained he had been concerned about Appellant's mental health "for years" and, although Appellant had never done anything that would indicate he was going to harm anyone, Appellant

nevertheless gave "the impression of being very violent. He has a loud voice, and he screams and rants and raves and parades up and down."

¶6 For the foregoing reasons, therefore, we affirm the superior court's treatment order.

/s/
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/
MICHAEL J. BROWN, Judge

/s/
JOHN C. GEMMILL, Judge