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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 7/18/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

IN THE MATTER OF IVY Y.)
) No. 1 CA-MH 13-0009
)
) DEPARTMENT B
)
) **MEMORANDUM DECISION**
)
) (Not for Publication -
) Rule 28, Arizona Rules
) of Civil Appellate Procedure)
)

Appeal from the Superior Court in Mohave County

Cause No. S8015MH201200041

The Honorable Lee F. Jantzen, Judge

AFFIRMED

Matthew J. Smith, Mohave County Attorney Kingman
By Dolores H. Milkie, Civil Deputy County Attorney
Attorneys for Appellee

Jill L. Evans, Mohave County Appellate Defender Kingman
By Diane S. McCoy, Deputy Appellate Defender
Attorneys for Appellant

H O W E, Judge

¶1 Ivy Y. appeals from the superior court's order committing her to a mental health facility because she is

persistently or acutely disabled and needs treatment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On December 20, 2012, Dr. Z petitioned for a court-ordered evaluation of Ivy. The petition stated that Ivy had a history of mental illness and that she refused to take her medications. Four days later, Dr. S petitioned for court-ordered treatment of Ivy, finding that she was persistently or acutely disabled and in need of treatment.

¶3 A notice of hearing was served on Ivy, informing her that a petition for court-ordered treatment had been filed and advising her that she had a right to appear and to be represented by an attorney to reply to the allegations on January 2, 2013. The parties appeared for a hearing on the petition on that date. Ivy stated that she wanted an Independent Medical Evaluation ("IME") and objected to the hearing going forward that day. The trial court continued the hearing until January 9, 2013, to allow time for the IME to be completed. At the January 9 hearing, Ivy and her counsel were present. The court stated that additional time was needed to complete the IME, and it continued the hearing to January 17.

¶4 The court held the mental health review hearing on January 17, 2013. Ivy's husband testified that her mental health deteriorated in May 2012 when she began to address people who

were not present and became concerned with things that did not exist. He also testified that Ivy started two stove fires in the home and purposely threw away his heart medication. He testified that Ivy would not voluntarily take her medication.

¶15 Dr. S testified that, based upon his observations of Ivy, he believed that she suffered from bipolar disorder and was not able to properly function in society. He testified that he believed that Ivy was persistently or acutely disabled because she had a history of entering into manic or depressive states and had very poor judgment. He stated that if Ivy was not treated, she would likely continue to suffer severe and abnormal mental, emotional or physical harm that would significantly impair her judgment, reason, behavior or capacity to recognize reality. He believed that Ivy required treatment and had a reasonable chance of recovery with a combination of inpatient and outpatient treatment. Dr. S testified that Ivy's poor insight and judgment made her unable to make an informed decision regarding her treatment and placement.

¶16 The court ordered Ivy to participate in involuntary treatment, finding clear and convincing evidence that she was persistently or acutely disabled, needed treatment, and was unwilling or unable to accept voluntary treatment. Ivy timely

appeals. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 36-546.01 and 12-2101(A)(1).¹

DISCUSSION

¶7 Ivy argues that the court's civil commitment order must be vacated because she was not properly served with the notice of hearing. She also argues that the evidence presented at the hearing was insufficient to find that she was persistently or acutely disabled and that the trial court erred in finding that she was unwilling or unable to accept voluntary treatment. Neither claim has merit.

I. Notice Requirement

¶8 While Ivy admits that she was properly served with the statutorily required notice for the previous hearings, she argues that she was not provided the statutorily required notice—the serving of the petition and affidavits—for the January 17 hearing. Arizona Revised Statutes § 36-356 requires that at least seventy-two hours before a hearing for court-ordered treatment, a copy of the petition, affidavits, and the notice of hearing shall be served on the patient. The purpose of the statute is to ensure that the prospective patient has enough notice to prepare for the hearing. *In re MH2006-000023*, 214 Ariz. 246, 249, ¶ 10, 150 P.3d 1267, 1270 (App. 2007).

¹ Absent revisions material to this decision, we cite the current version of applicable statutes.

¶19 Here, Ivy had been served with all the statutorily required documents before the first hearing, and the proceedings were twice continued to allow the completion of the IME she had requested. The January 9 minute entry shows that the court informed Ivy of the January 17 hearing. Because Ivy had more than seventy-two hours notice of the January 17 hearing, she had the statutorily required notice. We thus find no error.

II. Sufficiency of the Evidence

¶10 Ivy argues that Dr. S's testimony was insufficient to establish that she is persistently or acutely disabled. We will affirm a superior court's order for involuntary mental health treatment if substantial evidence supports it. *In re MH 2008-001188*, 221 Ariz. 177, 179, ¶ 14, 211 P.3d 1161, 1163 (App. 2009). We view the evidence in the light most favorable to sustaining the superior court's order and do not set aside the order unless it is clearly erroneous. *Id.*

¶11 Section 36-539(B) requires that two physicians who have evaluated the patient testify to their observations of the patient, their opinions concerning whether the patient is persistently or acutely disabled as a result of a mental disorder, and whether the patient requires treatment. A.R.S. § 36-539(B). The physicians must state specifically the nature and extent of the persistent or acute disability. *Id.*

¶12 At the hearing, Dr. S's testimony fulfilled § 36-539(B)'s requirements. Dr. S found Ivy persistently or acutely disabled because she suffers from schizophrenia and bipolar disorder. He based his conclusion on his observations of Ivy, her history of entering into manic or depressive states, and the fact that she is "disruptive, intrusive and has very poor judgment." He further stated that he believed she needed treatment. His testimony satisfied § 36-539(B)'s requirements.

¶13 Ivy also argues that the State presented insufficient evidence that she was persistently or acutely disabled. Section 36-501(32) defines "persistently or acutely disabled" as a severe mental disorder that meets the following criteria: (a) If not treated has a substantial probability of causing severe and abnormal harm that significantly impairs judgment and behavior; (b) Substantially impairs the capacity to make informed decisions regarding treatment; (c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

¶14 At the hearing, evidence showed that Ivy was persistently or acutely disabled. Ivy had impaired judgment, reason and capacity to recognize reality and was not able to make an informed decision regarding her treatment. If Ivy was not treated, she would continue to suffer severe and abnormal mental, emotional or physical harm. Ivy has a reasonable

prospect of being treated with a combination of inpatient and outpatient treatment. The court therefore did not err in finding that Ivy is persistently or acutely disabled.

III. Voluntary Treatment

¶15 Ivy argues that the court erred in finding that she was unwilling or unable to accept voluntary treatment. Substantial evidence supports the court's finding that Ivy was unwilling to accept voluntary treatment. Dr. S testified that Ivy would not listen to a discussion of which medication she could try and that Ivy would not subject herself to the treatment that he believed was necessary for her. Ivy's husband similarly stated that Ivy refused to take her medication. Ivy also testified that she did not need medication and stated that she would refuse to take any medication. Substantial evidence supported the trial court's finding.

CONCLUSION

¶16 For the foregoing reasons, the trial court's decision is affirmed.

_____/s/_____
RANDALL M. HOWE, Presiding Judge

CONCURRING:

_____/s/_____
MAURICE PORTLEY, Judge

_____/s/_____
PATRICIA A. OROZCO, Judge