IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN RE THE MATTER OF CHRISTINA V.

No. 1 CA-MH 13-0041

FILED 12-26-2013

Appeal from the Superior Court in Mohave County
No. S8015MH201300017
The Honorable Lee Frank Jantzen Judge

AFFIRMED AS MODIFIED

COUNSEL

Mohave County Legal Defender's Office, Kingman
By Diane S. McCoy
Counsel for Appellant

Mohave County Attorney's Office, Kingman
By Dolores Milkie
Counsel for Mohave County

MEMORANDUM DECISION

Judge John C. Gemmill delivered the decision of the Court, in which Presiding Judge Maurice Portley and Judge Kent E. Cattani joined.

G E M M I L L, Judge:

¶1 Appellant appeals the trial court's order for treatment entered after the court found by clear and convincing evidence that Appellant was, as a result of a mental disorder, persistently or acutely disabled and a danger to self. For the reasons that follow, we affirm the treatment order but vacate the finding that Appellant was a danger to self.

FACTS AND PROCEDURAL HISTORY

¶2 On June 12, 2013, Mahamed Ramadan, M.D., filed a Petition for Court-Ordered Evaluation alleging reasonable cause to believe Appellant was a danger to self, a danger to others, and persistently or acutely disabled. The petition stated that Appellant was unwilling to undergo voluntary evaluation and needed supervision, care, and treatment. Additionally, Appellant's sister filed an application for Involuntary Evaluation, which was attached to the petition. The trial court ordered Appellant to undergo custodial evaluation.

¶3 On June 17, 2013, Laurence Seltzer, M.D., filed a Petition for Court Ordered Treatment ("Petition") alleging that, as a result of a mental disorder, Appellant was a danger to self and was persistently or acutely disabled. The Petition was based on, and included, two affidavits submitted by Dr. Seltzer and Dr. Zegarra, M.D., as well as a social work evaluation completed by Carol Marquis-Breckenridge, MSW/ACSW/LMSW. The Petition stated that the appropriate and available court-ordered treatment for Appellant was combined inpatient and outpatient treatment.

¶4 The trial court held a hearing on the Petition in which Dr. Seltzer, Dr. Zegarra, Appellant's sister ("Sister"), Appellant's mother ("Mother"), and Appellant testified. Sister testified that Appellant thought people were coming after her and, on occasion, shouted at strangers Appellant believed were conspiring against her. According to Sister, Appellant believed there were implants throughout her body that connected to wires and sent vocalizations to her. Appellant indicated that if she were to talk about the conspiracy against her or about something she should not discuss, she would be zapped by wires. Appellant tried to remove the implants herself, and on at least one occasion, tried to remove an implant by reaching down her throat. On another occasion, Appellant attempted to remove a cyst in her wrist with a syringe and claimed she found a piece of an implant in the process.

¶5 Mother testified that Appellant thought people were watching her and that she heard voices from both objects and people.

Appellant believed people were talking about her, including her neighbors and people sitting behind Appellant at church. Mother also testified that Appellant thought there were implants inside her body. On cross examination, Mother testified that Appellant once told her she probed her children for implants.

¶6 Both Dr. Seltzer and Dr. Zegarra testified about their evaluations of Appellant. Dr. Seltzer evaluated Appellant and determined she suffered from a delusional mental disorder. According to Dr. Seltzer, Appellant was persistently or acutely disabled, and because of her delusions, she was unable to function adequately. Dr. Seltzer concluded that if Appellant took medication, she could receive outpatient treatment. Because Appellant would not agree to take medication, inpatient treatment for 180 days was appropriate.

¶7 Dr. Seltzer explained that a mental disorder left untreated would create a "substantial probability that [Appellant] would suffer or continue to suffer severe and abnormal mental, emotional, or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality." Dr. Seltzer explained the advantages and disadvantages of treatment to Appellant, but because Appellant did not believe she needed treatment, she would not agree to voluntary treatment.

¶8 Dr. Zegarra independently evaluated Appellant and testified that Appellant's mental disorder made her persistently and acutely disabled. Dr. Zegarra stated that Appellant was previously diagnosed with psychotic disorder and currently suffered from delusions of paranoia. Additionally, Dr. Zegarra testified that, if left untreated, Appellant would continue to suffer harm that would significantly impair her judgment, reason, behavior, and capacity to recognize reality. Although Dr. Zegarra had explained to Appellant the advantages, disadvantages, and alternatives to treatment, she would not submit herself voluntarily for treatment. Thus, Dr. Zegarra recommended a combination of inpatient and outpatient treatment.

¶9 Last, Appellant testified at length during the hearing and provided explanations in response to the testimony of Sister, Mother, and the physicians. After considering the evidence, testimony, and the Petition, the trial court found by clear and convincing evidence that Appellant was, as a result of a mental disorder, persistently or acutely disabled, a danger to self, in need of psychiatric treatment, and unwilling to accept voluntary treatment. The trial court ordered Appellant to

undergo combined inpatient/outpatient treatment until she is no longer persistently or acutely disabled. The court ordered the combined inpatient/outpatient treatment for a period of time not to exceed 365 days with the period of inpatient treatment not to exceed 180 days.

¶10 Appellant timely appealed, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") §§ 36-546.01 and 12-2101(A)(1).

ANALYSIS

¶11 Appellant raises three arguments on appeal. First, Appellant asserts that the evidence presented at the hearing was insufficient to establish that she suffered from a mental disorder. Second, Appellant argues that the evidence was insufficient to support the finding that she was persistently or acutely disabled. Finally, Appellant argues that the evidence was insufficient to support the trial court's finding that her mental disorder caused her to be a danger to self.

¶12 Section 36-539 explains the requirements for a hearing on a petition for court-ordered treatment. The statute says, in relevant part, "[t]he evidence presented by the petitioner . . . shall include the testimony . . . of the two physicians who participated in the evaluation of the patient." A.R.S. § 36-539(B). The statute also requires that:

> The physicians shall testify as to their personal observations of the patient. They shall also testify as to their opinions concerning whether the patient is, as a result of mental disorder, a danger to self or others, is persistently or acutely disabled or is gravely disabled and as to whether the patient requires treatment. Such testimony shall state specifically the nature and extent of the danger to self or to others, the persistent or acute disability or the grave disability.

Id. Another statute requires that:

> If the court finds by clear and convincing evidence that the proposed patient, as a result of mental disorder, is a danger to self, is a danger to others, is persistently or acutely disabled or is gravely disabled and in need of treatment, and is either unwilling or unable to accept voluntary treatment, the court shall order the patient to undergo . . . [t]reatment in a program consisting of combined inpatient and outpatient treatment.

A.R.S. § 36-540(A)(2).

¶13 A court may order involuntary treatment only if it finds by clear and convincing evidence that treatment is necessary. A.R.S. § 36-540(A); *In re MH 2007–001236*, 220 Ariz. 160, 165, ¶ 15, 204 P.3d 418, 423 (App. 2008). The trial court's findings will not be set aside unless clearly erroneous or unsupported by substantial evidence. *In re Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995). In order to meet the clear and convincing burden of proof, "the record must contain all statutorily required information, including medical evidence expressed to a reasonable degree of medical certainty or probability to prove the elements for involuntary treatment." *MH 2007-001236*, 220 Ariz. at 169, ¶ 29, 204 P.3d at 427. To the extent Appellant raises issues involving statutory interpretation and application, our review is de novo. *In re MH 2006–000749*, 214 Ariz. 318, 321, ¶ 13, 152 P.3d 1201, 1204 (App. 2007).

I. Mental Disorder

¶14 Appellant argues that the evidence is insufficient to establish that she was suffering from a mental disorder as defined in A.R.S. § 36-501(25).[1] Specifically, Appellant argues that Dr. Zegarra's testimony was insufficient. Appellant points out that this court has observed that a physician's opinion must be expressed to a reasonable degree of medical certainty, and a diagnosis of a "possible" condition does not satisfy that requirement. *See MH 2007-001236*, 220 Ariz. at 170, ¶¶ 30-31, 204 P.3d at 428.

¶15 In contrast to *MH 2007-001236*, however, Dr. Zegarra personally observed and evaluated Appellant and determined that she was suffering from a mental disorder**.** When asked if Appellant was suffering from a mental disorder, Dr. Zegarra testified that Appellant was persistently and acutely disabled and was previously diagnosed with psychotic disorder. Unfortunately, when the transcript was prepared, the words used by Dr. Zegarra to state the current diagnosis were, for unknown reasons, not transcribable. Dr. Zegarra testified that Appellant had psychoses and delusions that were very persistent, however, and

[1] "'Mental disorder' means a substantial disorder of the person's emotional processes, thought, cognition or memory."

Appellant was experiencing delusions of paranoia at the time of the evaluation. To support these conclusions, Dr. Zegarra explained that during the evaluation, Appellant conveyed how the Government, her ex-husband, and private companies made her life very difficult.

¶16 In addition to the testimony at the hearing, Dr. Zegarra's affidavit stated that Appellant was suffering from a mental disorder diagnosed as "Schizophrenic Paranoid Type." Dr. Zegarra listed delusions of paranoia under the cognition section of the affidavit in support of the diagnosis. Because the definition of mental disorder can be satisfied if there is a substantial disorder of a person's cognition, the affidavit supports the finding that Appellant suffered from a mental disorder. *See* A.R.S. § 36-501(25).

¶17 Dr. Seltzer similarly testified that Appellant suffered from a mental disorder. Appellant does not dispute Dr. Seltzer's independent evaluation that she suffered from delusional disorder. Specifically, Dr. Seltzer stated that Appellant "has delusional disorder . . . which might be more serious than just delusional disorder, but she has a delusional disorder; that I'm sure of." To support the opinion, Dr. Seltzer stated that Appellant feels people do things to drive her crazy and believes there are implants in her body that communicate with her.

¶18 Even though the record is unclear as to Dr. Zegarra's diagnosis at the hearing, the additional testimony regarding Appellant's delusions and psychoses coupled with Dr. Zegarra's affidavit attached to the Petition provide sufficient evidence to support the trial court's finding that Appellant suffered from a mental disorder. Furthermore, although Dr. Seltzer made statements such as, "I guess . . . she feels that these implants are able to communicate with her . . . it makes it more bizarre than being delusional," his overall testimony also supports the court's finding. Dr. Seltzer said he was "sure" that Appellant suffered from delusional disorder, and he never expressed doubt regarding the diagnosis. Contrary to Appellant's argument, both physicians expressed to a degree of medical certainty that Appellant suffered from a mental disorder. Each physician independently evaluated Appellant and came to the conclusion that Appellant suffered from delusions.

¶19 We conclude that the evidence of record supports the trial court's finding of a mental disorder.

II. Persistently or Acutely Disabled

¶20 Appellant also argues that the evidence presented at the hearing was insufficient to establish that Appellant was persistently or acutely disabled. Specifically, Appellant argues there was insufficient evidence to prove by clear and convincing evidence that she was suffering from a severe mental disorder. Appellant also argues that, under A.R.S. § 36-501(32)(a), the evidence does not establish a substantial probability that Appellant's mental illness would cause her to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior, or capacity to recognize reality.

¶21 A.R.S. § 36-501(32) defines "Persistently or acutely disabled" as:

> [A] severe mental disorder that meets all the following criteria:
>
> (a) If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.
>
> (b) Substantially impairs the person's capacity to make an informed decision regarding treatment, and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.
>
> (c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

This court has interpreted a prior version of A.R.S. § 36-501(32)(a) to mean "that there must be the real probability that the individual will suffer some danger of harm from his mental disorder if the condition is not treated." *Maricopa County Cause No. MH-90-00566*, 173 Ariz. 177, 183, 840

P.2d 1042, 1048 (App. 1992).[2] In addition, "[i]f a person's mental disorder intensified due to lack of treatment, it is probable that the person would suffer impaired judgment, reason, behavior or capacity to recognize reality." *Id.* In *MH-90-00566*, the Appellant suffered from schizophrenia, paranoid type, believed other patients were spying on him, and wanted a gun for protection. Additionally, the Appellant was suffering from hallucinations and said that a voice made his decisions. *Id.* at 185. The physician opined that the Appellant would likely be a danger to himself and others if he acted on the hallucinations and paranoid delusions. *Id.* This court held that the evidence "was sufficient to find that [the appellant] had a severe mental disorder that, if not treated, would cause him to continue to suffer mental and emotional harm that would significantly impair his judgment, reason, behavior or capacity to recognize reality." *Id.* at 185-86.

¶22 In this case, we believe the evidence was sufficient to establish that Appellant was "persistently or acutely disabled" because of the testimony of Dr. Seltzer and Dr. Zegarra. Both physicians testified that if Appellant's disorder is not treated, there is a substantial probability that Appellant will continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.

¶23 Dr. Seltzer testified that because of the delusions, Appellant's nursing license was revoked and she was unable to function adequately. In addition, Dr. Seltzer reviewed Appellant's medical history and testified that Appellant's problems caused her to be previously psychiatrically hospitalized after she claimed to be followed, spied on, that the worlds were talking to her, and a religious cult was going to kill her. Dr. Seltzer testified that Appellant believed the implants placed in her body communicated with her. On cross examination, Dr. Seltzer opined that Appellant's condition is "getting worse."

¶24 Dr. Zegarra testified multiple times that Appellant's mental disorder made her persistently and acutely disabled. For example, Dr. Zegarra testified that Appellant could be a danger to herself based on the fact that her psychoses and delusions were very persistent. Dr. Zegarra also explained that Appellant's delusions upset her level of function,

[2] This case analyzed A.R.S. § 36-501(29), which is substantively the same as current A.R.S. § 36-501(32).

leading to the loss of Appellant's nursing license. Dr. Zegarra also specified that Appellant was exhibiting delusions of paranoia when she conveyed how the Government and her ex-husband made her life difficult. Dr. Zegarra also testified that treatment was appropriate to improve Appellant's level of functioning and lessen the intensity of the delusions.

¶25 Both physicians testified to the remaining requirements under A.R.S. § 36-501(32). The physicians testified that Appellant's mental disorder substantially impairs [her] capacity to make an informed decision regarding treatment, and this impairment causes [her] to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment. Dr. Seltzer and Dr. Zegarra had each independently explained to Appellant the advantages, disadvantages, and alternatives to treatment. Finally, the physicians testified that the mental disorder also has "a reasonable prospect of being treatable by other inpatient, outpatient or a combination of inpatient and outpatient treatment."

¶26 In addition to the physicians' testimony, Sister testified that Appellant tried to remove the implants from her body using various instruments. She reached down her throat, put an instrument up her nose, and attempted to pull a piece of implant through a syringe after draining a cyst in her wrist. Appellant also probed her children's ears for implants. Sister testified that Appellant shouted at strangers she believed were conspiring against her and yelled obscenities at neighbors she accused of zapping her with devices. Appellant threatened family members, and on one occasion, became frustrated with Sister's boyfriend and told him "I'm going to get a gun and I'm going to shoot you**."**

¶27 In light of the testimony from all of the witnesses, including Appellant, the trial court had substantial evidence to determine that Appellant was persistently or acutely disabled as a result of a mental disorder and in need of treatment. Thus, the trial court did not abuse its discretion by finding that Appellant had a severe mental disorder that will continue to cause mental and emotional harm if not treated.

III. Danger to Self

¶28 Last, Appellant contends that the evidence presented at the hearing was insufficient to support the trial court's order for civil

commitment on the ground that Appellant's mental disorder caused her to be a danger to self. Section 36-501(6)(a) defines a "danger to self" as

> behavior that, as a result of a mental disorder: (i) Constitutes a danger of inflicting serious physical harm on oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out. (ii) Without hospitalization will result in serious physical harm or serious illness to the person.

¶29 At the hearing, both Dr. Seltzer and Dr. Zegarra were asked if Appellant was a danger to self, and each replied that she "could be." On cross examination, both physicians testified that Appellant did not express thoughts of suicide or bodily harm. This testimony is insufficient as it does not meet the requirements of A.R.S. § 36-501(6).

¶30 Although the trial court found that Appellant was a danger to self, the trial court properly ordered treatment under A.R.S. § 36-540(A). The trial court had discretion to order treatment if the court found that Appellant was a danger to self *or* persistently or acutely disabled. Therefore, although we agree that the evidence is insufficient to support the court's finding that Appellant was a danger to self or others, the order for treatment remains legally and factually supported.

CONCLUSION

¶31 Considering the totality of the evidence, including the physicians' testimony, the Petition (with its supporting affidavits), and the testimony of Sister, Mother, and Appellant, we conclude that the trial court had sufficient evidence to order Appellant to receive involuntary treatment. We therefore affirm the order for treatment, but with the following modification: we vacate that portion of the trial court's finding that Appellant was a danger to herself.