IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN RE THE MATTER OF PAYTON R.

No. 1 CA-MH 16-0055
FILED 2-23-2017
Appeal from the Superior Court in Navajo County

No. S0900MH201600043
The Honorable Michala M. Ruechel, Judge

AFFIRMED

COUNSEL

Emery K. La Barge, Attorney at Law, Snowflake
By Emery K. La Barge
Counsel for Appellant

Navajo County Attorney's Office, Holbrook
By Jason S. Moore
Counsel for Appellee

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Lawrence F. Winthrop joined.

T H O M P S O N, Judge:

¶1 Payton R. (appellant) appeals from an order for involuntary mental health treatment. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 On July 7, 2016, appellant was admitted to ChangePoint Hospital and a petition for court-ordered evaluation was filed. The petition alleged that appellant was persistently and acutely disabled and a danger to others. According to the petition, appellant had been off his medication, had initiated a severe altercation with his brother, his wife was afraid of him, and he believed either that he was Jesus Christ or had just spent ten days with Jesus Christ.

¶3 Due to assignment issues in the superior court, an Order for Evaluation was signed on July 8th rather than on July 7th. Appellant received a complete physical examination on July 7, 2016. The examination revealed no physical cause for the symptoms displayed. Also, beginning on July 7th and continuing on, appellant was examined by two psychiatrists, each of whom filed affidavits in connection with the petition.[1] Both affidavits indicated that appellant was persistently and acutely disabled. One psychiatrist found he had an "unspecified psychosis" and the other found appellant had an "other psychotic disorder" which included religious delusional thoughts.[2] Appellant refused treatment.

¶4 On the basis of the physical and psychiatric evaluations, a Petition for Court-Ordered Treatment was filed. Pursuant to Arizona Revised Statutes (A.R.S.) § 36-540(A)(2) (2016), the petition sought both in-patient and out-patient treatment. A hearing was held and the testimony of the two psychiatrists essentially mirrored their affidavits, although Dr. Moyal had since amended his diagnosis to schizophrenia after having spent more time with appellant. Two acquaintance witnesses from ChangePoint, a psychiatric tech and a social worker, also testified. The superior court found by clear and convincing evidence that appellant was, as a result of a mental disorder, persistently or acutely disabled, in need of psychiatric treatment, and unwilling or unable to accept voluntary treatment. *See*

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[1] Dr. Moyal examined appellant "everyday" beginning on July 7, 2016. Dr. Gibson examined appellant on July 12th, 2016.

[2] Appellant had previously been admitted to ChangePoint Hospital, under its prior name Pineview Hospital, on similar allegations.

generally, A.R.S. § 36-501(31) (2016). Accordingly, the court ordered appellant to undergo in and out-patient treatment.

DISCUSSION

¶5 On appeal, appellant first argues we should vacate the treatment order because the state failed to strictly comply with the requirements of A.R.S. §§ 36-521 (2016) ("Preparation of Petition for Court-Ordered Evaluation; Procedure for Prepetition Screening") and -501(11) (2016) (defining "evaluation"). *See Matter of Pima County Mental Health Sev.*, 176 Ariz. 565, 567, 863 P.2d 284, 286 (App. 1993) ("Statutes providing for involuntary commitment on the basis of mental illness must be strictly construed.") (citations omitted). Specifically, appellant argues the state failed to comply because, due to the change in the assignment of a judge, it happened that the physical evaluation prong of the assessment was conducted in the 24 hours before the court ordered the evaluation. *See* A.R.S. § 36-530(A) (2016) (evaluations to be done "as soon as possible after the court's order for evaluation").

¶6 We review the interpretation and application of statutes de novo. *In re MH-2006-000749*, 214 Ariz. 318, 321, ¶ 13, 152 P.3d 1201, 1204 (App. 2007). We review the facts underlying a civil commitment order in the light most favorable to upholding the superior court's judgment and will not set aside the court's factual findings unless clearly erroneous. *In re MH 2008–002596*, 223 Ariz. 32, 35, ¶ 12, 219 P.3d 242, 245 (App. 2009).

¶7 Section 36-501(11) requires a mental health evaluation by two psychiatrists, as well as a physical examination to rule out a medical reason for appellant's behavior. These evaluations are to be done "as soon as possible."[3] *See* A.R.S. § 36-530(A). Both evaluations occurred, as intended by the statute, shortly after appellant's admission to ChangePoint. It was determined that appellant's mental state was not caused by any physical illness or injury. Nothing in the record suggests that the result of appellant's physical examination would have changed during the 24-hours between July 7th and July 8th.

¶8 Recently this court decided *In re MH2015–003266*, 240 Ariz. 514, 382 P.3d 72 (App. 2016). In that case we held that the actual failure to

[3] Appellee points out that in the ordinary course of the proceedings the evaluation order would have occurred on the day it was requested, that it was otherwise here was happenstance. Indeed, the order was issued the next day.

conduct a physical evaluation, as part of the overall evaluation, did not invalidate the civil commitment order. *Id.* at 515, ¶ 10, 382 P.3d at 73. Given the good faith effort to provide appellant with the mandated statutory protections, as quickly as possible, and the lack of any asserted change in physical status, we cannot find error due to erroneously conducting the physical examination before the evaluation was ordered.

¶9 Appellant next asserts that the evidence was insufficient to support a finding that he was persistently and acutely disabled because the evidence failed to satisfy A.R.S. § 36-539(B) (2016) as to the two required "acquaintance" witnesses. He argues that the two employees of ChangePoint do not satisfy the statutory requirements. We disagree. *See Matter of Appeal in Pima County Mental Health No. 862-16-84*, 143 Ariz. 338, 340, 693 P.2d 993, 995 (App. 1984) (hospital employees could properly serve as acquaintance witnesses where they had contact with patient during time of the mental illness). The evidence in the record supports a finding that appellant was persistently and acutely disabled.

¶10 Finally, appellant briefly asserts he was denied effective assistance of counsel because his attorney did not object to or thoroughly cross-examine the two acquaintance witnesses. In support of this claim, appellant cites *In re MH2010-002637*, 228 Ariz. 74, 81, ¶¶ 28-29, 263 P.3d 82, 89 (App. 2011). This is not a situation like *MH2010-002637*. The attorney in that case never interviewed the patient, did not seek his participation at the hearing, offered no evidence, and made no closing argument. *Id.* at ¶ 28. However, even in that case, we said "[s]imply because the hearing counsel did not cross-examine most of the witnesses or present evidence to oppose the petition does not mean that counsel was ineffective." *Id*. at 84, ¶ 33, 263 P.3d at 92. Our review of the record indicates that counsel was in compliance with the statutory directives of A.R.S. § 36-537(B) (2016) (requiring counsel to interview patient and physicians, to review petition and supporting documentation, interview supporting witnesses, and to explain the legal process to patient).

CONCLUSION

¶11 The treatment order is affirmed.

AMY M. WOOD • Clerk of the Court
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