

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 03/02/2010  
PHILIP G. URRY, CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

IN RE MH 2008-002504 ) 1 CA-MH 09-0002  
)  
) DEPARTMENT B  
)  
) **MEMORANDUM DECISION**  
) (Not for Publication  
) - Rule 28, Arizona  
) Rules of Civil  
) Appellate Procedure)  
)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2008-002504

The Honorable Benjamin E. Vatz, Commissioner  
The Honorable Patricia Arnold, Commissioner

**AFFIRMED**

Andrew P. Thomas, Maricopa County Attorney Phoenix  
By Anne C. Longo, Deputy County Attorney  
and Davina Bressler, Deputy County Attorney  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Tennie B. Martin, Deputy Public Defender  
Attorneys for Appellant

N O R R I S, Judge

¶1 On October 28, 2008, Dr. Michael Brennan  
("Petitioner") petitioned the Maricopa Superior Court seeking an  
involuntary mental health evaluation of appellant. After

conducting an evidentiary hearing, the superior court found by clear and convincing evidence appellant was persistently or acutely disabled, was in need of psychiatric treatment, and was unwilling or unable to accept voluntary treatment. Accordingly, the court ordered appellant to undergo a combination of inpatient and outpatient treatment not to exceed 365 days ("treatment order").

¶2 On appeal, appellant asks us to vacate the treatment order because she was detained in violation of Arizona Revised Statutes ("A.R.S.") section 36-535(B) (Supp. 2008) after the superior court dismissed a prior petition for court-ordered treatment on October 28, 2008.<sup>1</sup> Appellee<sup>2</sup> argues the remedy is not to dismiss (or vacate) the treatment order (which the record reflects complied with all statutory requirements) but to seek release during the period of improper detention.<sup>3</sup> We agree with appellee. *Cf. In re MH 2008-002393*, 223 Ariz. 240, 221 P.3d 1054 (App. 2009) (appropriate remedy when individual is

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<sup>1</sup>Section 36-535(B) before it was amended in 2009, stated that once a petition for court-ordered treatment is filed, the court "shall either release the proposed patient or order the hearing to be held within six days after the petition is filed . . . ."

<sup>2</sup>The Maricopa County Attorney's office, as required by A.R.S. § 36-503.01 (2009), represented Petitioner in the superior court, and thus is the appellee here.

<sup>3</sup>Appellee does not challenge that appellant's detention went beyond the prescribed six days.

involuntarily held for mental health evaluation in excess of 72-hour statutory time frame is to seek release of the patient during period of improper detention; dismissal of order for involuntary treatment entered in subsequent proceeding is not the appropriate remedy); *In re MH 2006-002044*, 217 Ariz. 31, 170 P.3d 280 (App. 2007) (detention of appellant beyond 24-hour statutory period did not entitle appellant to have involuntary treatment and commitment order vacated). As in *MH 2008-002393* and *In re MH 2006-002044*, appellant could have sought relief through a writ of habeas corpus.

¶13 In *In re MH 2008-002393*, we stated: "Although we do not condone holding individuals in excess of statutory time frames, the appropriate remedy when that occurs is to seek release of the patient during the period of improper detention, not to request dismissal of a later-filed petition that complies with statutory requirements." *Id.* at \_\_\_, ¶ 12, 170 P.3d at 1057. What we said in *In re MH 2008-002393* is applicable here.

¶14 Finally, appellant argues A.R.S. § 36-535(B) is unconstitutionally vague and her detention constituted an abuse of process. Appellant did not, however, make these arguments in the superior court and we will not address them for the first time on appeal. See *Englert v. Carondelet Health Network*, 199 Ariz. 21, 26, ¶ 13, 13 P.3d 763, 768 (App. 2000).

**CONCLUSION**

¶15 We therefore affirm the treatment order.<sup>4</sup>

/s/

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PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

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DANIEL A BARKER, Judge

/s/

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PETER B. SWANN, Judge

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<sup>4</sup>We also note this appeal is moot as the treatment order has expired.