

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: 01/26/2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE MH 2009-000684) 1 CA-MH 09-0035
)
) 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) (Not for Publication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 2009-000684

The Honorable Patricia Arnold, Judge *Pro Tempore*

AFFIRMED

Andrew P. Thomas, Maricopa County Attorney Phoenix
by Anne C. Longo, Deputy County Attorney
and Bruce P. White, Deputy County Attorney
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Edith M. Lucero, Deputy Public Defender
Attorneys for Appellant

W E I S B E R G, Judge

¶1 P.M. appeals from the superior court's involuntary mental-health treatment order on the ground that one of the physician witnesses failed to personally examine her as required by law and thus that she was denied due process. For reasons

that follow, however, we find no clear error but instead hold that substantial evidence supports the superior court's order and affirm.

BACKGROUND

¶12 On March 18, 2009, Dr. Michael Hughes filed a petition for court-ordered treatment ("COT") avowing that Appellant was persistently or acutely disabled and recommended combined inpatient and outpatient treatment. His affidavit stated that when interviewed at the urgent care center, Appellant was "extremely guarded and paranoid and would not provide significant information during the interview. [She] reportedly answered most questions by saying, 'I can't tell you.'" During an interview at Desert Vista by a psychiatric nurse practitioner, Appellant said that she did not need psychiatric medications because they would make [her] "more crazy," and denied being diabetic. Dr. Hughes noted that during his interview, Appellant was "guarded and non-disclosing" and denied that she had a psychiatric illness or needed medication for such an illness or diabetes. Nevertheless, Dr. Hughes noted a prior diagnosis of chronic paranoid schizophrenia and a history of diabetes. He completed an addendum for persistently or acutely disabled patients.

¶13 In an affidavit completed the next day, Dr. Andrew Parker stated that when he informed Appellant of the purpose of the interview and its non-confidential nature, Appellant said that she would rather not be interviewed or answer questions. His affidavit additionally observed, however, that Appellant was "disheveled"; her affect was "blunted"; her mood "depressed and anxious"; her thought processes "impaired," "blocking" and "guarded"; her motor skills "restricted"; and her cognition "impaired" with poor insight and judgment. He noted that she was "internally preoccupied and delusional" and that she had been "observed to be talking to herself and paranoid." His addendum stated that if not treated, she likely would continue to suffer severe harm, that her mental disorder (paranoia, thought blocking, poor insight) substantially impaired her ability to make an informed decision regarding treatment, and that she was incapable of understanding the advantages and disadvantages of treatment and of alternatives to the treatment offered but that those items had been explained to her. The petition for COT was filed later that morning.

¶14 At a hearing on the petition, the parties stipulated to admit Dr. Hughes' affidavit. Dr. Parker was called to testify. He said that before meeting Appellant, he had reviewed her complete chart and also observed her as he approached her on

the unit and as she walked to the interview room. Once there, he had explained her right to refuse to be interviewed or to answer questions, and she had exercised her right to refuse. He said that his interaction with her had taken a minute or two. Nevertheless, Dr. Parker reiterated the specific observations contained in his affidavit for the court and stated that his observations were the basis for his opinion of Appellant's mood and thought processes. He did not make a second attempt to interview her because she "had exercised her right to not participate or answer questions" and he "felt [he] had enough evidence." He opined, however, that Appellant did not participate in the interview due to her illness, which he characterized as schizophrenia, paranoid type.

¶15 While testifying, Dr. Parker consulted his affidavit several times without objection.¹ When asked if he had been able to *discuss* the advantages and disadvantages of treatment, he said, "With the patient not cooperating, that would have been difficult." On cross-examination, Appellant's counsel did not challenge Dr. Parker's avowal that he had explained the advantages and disadvantages of treatment but elicited that

¹In ruling on the petition, the court stated that in addition to the testimony, it had "reviewed and considered the affidavits of Dr. Parker and Dr. Hughes" and their opinions that Appellant was persistently and acutely disabled. Appellant did not object to consideration of Dr. Parker's affidavit.

Appellant had not been physically abusive and that Dr. Parker had relied primarily on the chart to assess her insight and judgment.

¶6 A petition for court-ordered treatment must be accompanied by the affidavits of two physicians who conducted examinations of the patient as part of an "evaluation."² A.R.S. § 36-533(B) (2009). "Examination" is defined as "an exploration of the person's past psychiatric history and of the circumstances leading up to the person's presentation, a psychiatric exploration of the person's present mental condition and a complete physical examination." A.R.S. § 36-501(14) (2009). A complete physical examination in the context of a mental health examination, however, "is not the typical annual physical but a component of a psychiatric examination, which includes observing the patient's demeanor and physical presentation, and can aid in diagnosis." *MH 2008-000438*, 220 Ariz. 277, 280 n. 3, ¶ 14, 205 P.3d 1124, 1127 n. 3 (App. 2009).

¶7 On appeal from court-ordered treatment, we view the evidence in the light most favorable to upholding the order. *Id.* at 278, ¶ 6, 205 P.3d at 1125. We also examine the record to determine if substantial evidence supports the court's

²Evaluation is "a professional multidisciplinary analysis based on data describing the person's identity, biography and medical psychological and social conditions carried out by a group of persons" including two licensed physicians and two others. A.R.S. § 36-501(12)(2009).

judgment. *In re MH 2008-000097*, 221 Ariz. 73, 77, ¶ 17, 210 P.3d 1244, 1248 (App. 2009). Substantial evidence is that which would permit a reasonable person to reach the court's conclusion. *Id.* Furthermore, we will not overturn an order for treatment unless we find it "clearly erroneous or unsupported by any credible evidence." *Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995).

¶8 By law, a person is considered persistently or acutely disabled if he or she suffers from a severe mental disorder that

[s]ubstantially 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 alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

A.R.S. § 36-501(33)(b) (2009). Some time ago, we interpreted this language in a case in which the patient declined to speak to either psychiatrist and thus prevented the physicians from either explaining or discussing the advantages and disadvantages of treatment and the alternatives to the treatment offered. *In re Pima County MH Serv. Action*, 176 Ariz. 565, 568, 863 P.2d 284, 287 (App. 1993). There, we acknowledged the specific determinations a court must make in order to find a person

persistently or acutely disabled, but we also held that mental health officials need not "engage in a confrontation with a mentally ill patient or have the patient physically restrained in order to fulfill the letter of the requirement. This is particularly true where, as here, the record reflects a long history of mental illness, and the testimony of four witnesses . . . support[s] the diagnosis of an acute and persistent disorder." *Id.*

¶9 In this case, the addendum to Dr. Parker's affidavit stated that, as required, he had *explained* the advantages and disadvantages of treatment and the alternatives to treatment as well as the advantages and disadvantages of the alternatives. His testimony that he was unable to *discuss* the alternatives with Appellant given her wish not to answer questions is not inherently inconsistent with his testimony regarding his explanation to Appellant. One can explain information to another without engaging in a discussion of it. Furthermore, Dr. Parker elaborated on his observations based on his review of Appellant's chart and his brief encounter with her.

¶10 In addition to Dr. Hughes' affidavit and testimony from Dr. Parker, the court heard testimony from Appellant's daughter that Appellant refused to take medications and was "really scared that people were trying to break in the house,

that they were trying to kill her [and s]o she wouldn't sleep, was always up." She said that Appellant talked to herself, banged on the walls, and left the stove on while cooking. Appellant's case manager testified that Appellant did not want to see the doctors or take medications, said that the doctors "were reading her future" and her daughter was a ghost, and was concerned for the case manager's safety.

¶11 We conclude that the evidence adequately supported the court's determination that Appellant was persistently and acutely disabled. Dr. Parker's testimony included observations of Appellant's "demeanor and physical presentation" and permissible use of those observations as a diagnostic aid. See *MH 2008-000438*, 220 Ariz. at 280 n. 3, ¶ 14, 205 P.3d at 1127 n. 3. His testimony also revealed that he had examined Appellant's complete chart and thus, as A.R.S. § 36-501(14) requires, that he had explored her "past psychiatric history[,] . . . the circumstances leading up to [her] presentation, [and also had conducted] a psychiatric exploration of [her] present mental condition." Accordingly, despite Appellant's refusal to be interviewed or to answer questions, Dr. Parker examined her and "describe[d] in detail the behavior which indicate[d]" that she was persistently or acutely disabled. A.R.S. § 36-533(B). He also attested that he had explained the treatment advantages and disadvantages as well as treatment alternatives but that

Appellant was incapable of understanding these matters. We find no deprivation of due process under these circumstances.

CONCLUSION

¶12 For the foregoing reasons, we affirm the judgment.

_____/S/_____
SHELDON H. WEISBERG, Judge

CONCURRING:

_____/S/_____
PATRICIA K. NORRIS, Presiding Judge

_____/S/_____
MARGARET H. DOWNIE, Judge