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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 02/25/2010  
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BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

IN RE MH 2009-001014 ) No. 1 CA-MH 09-0043  
)  
) 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) (Not for Publication -  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 2009-001014

The Honorable Karen L. O'Connor, Judge

**AFFIRMED**

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

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

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**B A R K E R**, Judge

¶1 Appellant seeks dismissal of an order of commitment for involuntary mental health treatment. He argues he was

denied due process of law because the trial court allowed an evaluating doctor to appear telephonically. We disagree and affirm the order.

### ***Facts and Procedural History***

¶12 Appellant was detained on April 21, 2009, pursuant to an application for involuntary evaluation. The application was accompanied by a petition for court-ordered evaluation of Appellant filed by Dr. Ann Negri. Dr. Negri found reasonable cause to believe Appellant was persistently or acutely disabled and in need of psychiatric treatment for bipolar disorder. The trial court issued a detention order for evaluation and notice on April 22, 2009.

¶13 During Dr. Kamala Premkumar's evaluation of Appellant, Appellant demonstrated impaired insight and judgment, had pressured and verbose speech, and appeared to be paranoid about being investigated by the Maricopa County Sheriff. Dr. Premkumar concluded Appellant had bipolar mood disorder with psychosis and was persistently or acutely disabled. Dr. Sead Hadziahmetovic also evaluated Appellant and observed Appellant had an elevated and expansive mood, disorganized and delusional thinking, and poor insight and judgment. During the interview with Dr. Hadziahmetovic, Appellant, in a grandiose and paranoid fashion, stated he "was an expert in the field of psychiatry" and found mistakes in Freud's work, stated he was an expert

guitarist, revealed his brother stole his fiancé, and described his apartment complex as stealing his money and endangering his life. Dr. Hadziahmetovic concluded Appellant was acutely or persistently disabled, had bipolar disorder, and his most recent episode was manic with psychosis. On April 28, 2009, Dr. Premkumar filed a petition for court-ordered treatment of Appellant requesting combined inpatient and outpatient treatment because Appellant was persistently or acutely disabled as a result of a mental disorder.

¶4 A hearing was held on the petition for court-ordered treatment on May 4, 2009. The two acquaintance witnesses and Dr. Premkumar testified in open court. Although the attorneys and judge believed Dr. Hadziahmetovic would testify in open court as well, Dr. Hadziahmetovic called the trial court during the testimony of another witness and appeared telephonically because he was on vacation. The following exchange took place:

UNIDENTIFIED SPEAKER: You didn't get the email last week from Sharon (phonetic)?

[PETITIONER'S ATTORNEY]: Oh.

THE COURT: Okay. Proceed.

UNIDENTIFIED SPEAKER: Did we hang up on him?

[PETITIONER'S ATTORNEY]: Probably. That is Doctor Hadziahmetovic.

THE COURT: How do you want to handle this?

[PETITIONER'S ATTORNEY]: I think we would probably --

UNIDENTIFIED SPEAKER: Is there a speaker?

UNIDENTIFIED SPEAKER: Yes.

[PETITIONER'S ATTORNEY]: Dr. Hadziahmetovic?

DR. HADZIAHMETOVIC: Yes.

[PETITIONER'S ATTORNEY]: You're on the speakerphone at the bench. Just hang on for a second. I'd like to -- where are you today, Dr. Hadziahmetovic?

DR. HADZIAHMETOVIC: Where am I?

[PETITIONER'S ATTORNEY]: You're on vacation, aren't you?

DR. HADZIAHMETOVIC: I am on vacation. I am on my way to pick up my children from school.

THE COURT: Okay. How do you want to proceed with the doctor on the phone? Do you want to -- can we call this witness out of order?

[PETITIONER'S ATTORNEY]: Yes.

THE COURT: Okay. We'll have you step down. And doctor, this is Judge Karen O'Connor. If I could have you raise your right hand and be sworn.

DR. HADZIAHMETOVIC: Okay.

¶15 After Appellant's attorney objected to him appearing telephonically and explained she could not produce any authority in support of her objection because she did not know telephonic appearance would be an issue at the hearing, the trial court

overruled the objection and allowed examination of Dr. Hadziahmetovic. Dr. Hadziahmetovic told the court he remembered Appellant and testified consistently with his affidavit, which accompanied the petition for court-ordered treatment.

¶16 At the conclusion of the hearing, the trial court found clear and convincing evidence that Appellant was suffering from a mental disorder that made him persistently or acutely disabled. The court ordered combined inpatient and outpatient treatment not to exceed 365 days, with the inpatient treatment not to exceed 180 days. Appellant filed a timely notice of expedited appeal.

¶17 We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 36-546.01 (2009), 12-120.21(A)(1) (2003), and -2101(K) (2003).

#### ***Discussion***

¶18 During a hearing on a petition for court-ordered treatment, the petitioner must present "testimony of two or more witnesses acquainted with the patient at the time of the alleged mental disorder . . . and testimony of the two physicians who performed examinations in the evaluation of the patient." A.R.S. § 36-539(B) (Supp. 2009). Similar to the right to confrontation under the Sixth Amendment to the United States Constitution, patients have a procedural due process right to confront witnesses at hearings for involuntary commitment. *In*

re *MH 2004-001987*, 211 Ariz. 255, 259-60, ¶¶ 20-21, 120 P.3d 210, 214-15 (App. 2005).

¶9 Witnesses may appear telephonically when their testimony is reliable and promotes an important public policy. *Id.* at 260, ¶ 21, 120 P.3d at 215. "Providing individuals with needed mental health care on a timely basis is an important public policy." *Id.* at ¶ 22. Telephonic testimony furthers this public policy when "a showing of true necessity, based on unavailability" of the witness is established. *In re MH 2008-000867*, 222 Ariz. 287, 291-92, ¶¶ 18, 23, 213 P.3d 1014, 1018-19 (App. 2009). There is no "hard-and-fast rule" regarding necessity; this determination must be made on a case-by-case basis. *Id.* at 292, ¶ 24, 213 P.3d at 1019 (holding there was a lack of necessity when an evaluating doctor appeared telephonically because the petitioner assumed the doctor's physical presence was not needed); see also *In re MH 2004-001987*, 211 Ariz. at 260, ¶ 24, 120 P.3d at 215 (holding trial court properly found necessity for telephonic testimony by an acquaintance witness living in Alabama because of "the need for an expedited hearing in Arizona").

¶10 The necessity of telephonic testimony is a mixed question of law and fact; we defer to the trial court's factual findings but review questions of law *de novo*. *In re MH 2004-001987*, 211 Ariz. at 260, ¶ 24, 120 P.3d at 215. We will set

aside the factual findings if they are not supported by credible evidence. *In re Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995).

¶11 In this case, the trial court determined Dr. Hadziahmetovic was unavailable to appear in person because he was "on vacation" and "on [his] way to pick up [his] children from school." It appears from the record that Dr. Hadziahmetovich attempted to give the court notice that he could not appear in person prior to the hearing. Although the record does not identify Dr. Hadziahmetovic's precise physical location, "express" factual findings of necessity are not needed. *In re MH 2004-001987*, 211 Ariz. at 260-61, ¶ 24, 120 P.3d at 215-16. Appellant's attorney could have further questioned Dr. Hadziahmetovic regarding his vacation schedule but failed to do so. We defer to the trial court's determination that telephonic testimony was necessary because trial courts "are in the best position to determine the impact of travel on a witness and the entire proceeding in each particular case." *Id.*

¶12 Dr. Hadziahmetovic's testimony was reliable. Petitioner's counsel identified him as Dr. Hadziahmetovic upon hearing his voice, and Appellant did not dispute his identity during the hearing. Dr. Hadziahmetovic also testified consistently with his affidavit. Accordingly, the trial court

did not deny Appellant due process of law by allowing the telephonic appearance.

***Conclusion***

¶13 For the above-stated reasons, we affirm the trial court's order committing Appellant to involuntary mental health treatment.

/s/

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DANIEL A. BARKER, Judge

CONCURRING:

/s/

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PATRICIA K. NORRIS, Presiding Judge

/s/

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PETER B. SWANN, Judge