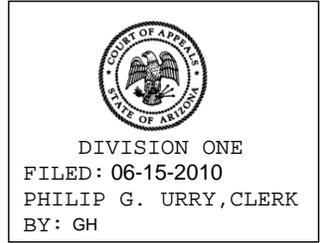


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

IN RE MH 2009-001204 ) 1 CA-MH 09-0047  
)  
) DEPARTMENT E  
)  
) **MEMORANDUM DECISION**  
) (Not for Publication  
) - Rule 28, Arizona  
) Rules of Civil  
) Appellate Procedure)  
)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2009-001204

The Honorable Patricia Arnold, Judge Pro Tempore

**AFFIRMED**

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Richard M. Romley, Acting 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 Tennie B. Martin, Deputy Public Defender  
Attorneys for Appellant

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**N O R R I S**, Judge

¶1 After conducting an evidentiary hearing, the superior court found by clear and convincing evidence appellant was suffering from a mental disorder and, as a result, was a danger

to others, persistently or acutely disabled, in need of psychiatric treatment, and unwilling or unable to accept voluntary treatment. Accordingly, on May 20, 2009, the court entered an order requiring appellant to undergo a combination of inpatient and outpatient treatment not to exceed a total of 365 days ("treatment order").

¶12 On appeal, appellant asks us to vacate the treatment order because the evaluating physicians did not testify in person and the parties failed to enter into a valid stipulation to use the evaluating physicians' affidavits in lieu of their testimony and, even if there was a valid stipulation, the court failed to conduct a colloquy with appellant personally to decide whether he had knowingly, voluntarily, and intelligently waived his right to have the evaluating physicians testify in person. Appellant asserts the court's failure to engage in this colloquy violated statutory requirements and deprived him of due process.

¶13 As an initial matter, this appeal is moot because appellant is appealing from a treatment order that has expired. Even if not moot, we decline to vacate the treatment order.

¶14 First, we reject appellant's argument the record does not reflect the parties stipulated to admit the evaluating physicians' affidavits at trial. When there is a discrepancy or conflict "between the minutes and a reporter's transcript, the

circumstances of the particular case determine which shall govern." *State v. Rockefeller*, 9 Ariz. App. 265, 267, 451 P.2d 623, 625 (1969). In that situation, we have a "duty to interpret all parts of the record together, giving effect, if possible, to all and a deficiency in one place may be supplied by what appears in another." *Id.*

¶15 Here, although the hearing transcript fails to reflect the stipulation, the hearing minute entry does. Consistent with the minute entry, in responding to appellant's motion to dismiss the petition at the close of the petitioner's case-in-chief, petitioner's counsel argued there was sufficient evidence to "move forward" based on the testimony of the acquaintance witnesses and "what is contained in the affidavits from the doctors." Further, at the conclusion of the hearing, in announcing its decision, the court stated it had reviewed and considered the affidavits of the evaluating physicians as well as the medication affidavit submitted by one of the physicians. Based on the "evidence presented," the court then found, by clear and convincing evidence, appellant was in need of psychiatric treatment as a result of a mental disorder. At no time did appellant's counsel raise any objection to the court's reliance on the evaluating physicians' affidavits or assert the parties had not reached an agreement regarding their use at the

hearing. See *Estate of Reinen v. N. Ariz. Orthopedics, Ltd.*, 198 Ariz. 283, 286, ¶ 9, 9 P.3d 314, 317 (2000) (objection to proffered testimony must be made either prior to or at the time it is given, and failure to do so constitutes waiver). Accordingly, the record reflects appellant stipulated to the admission of the evaluating physicians' affidavits and the superior court was entitled to rely on those affidavits in lieu of their testimony at the hearing.

¶16 Next, for the reasons stated in *In re MH 2009-001264*, \_\_\_ Ariz. \_\_\_, \_\_\_, ¶¶ 7-11, 229 P.3d 1012, 1014-15 (App. 2010), we reject appellant's argument the court was required to engage in a colloquy with him personally to decide whether he had knowingly, voluntarily, and intelligently waived his right to have the evaluating physicians testify in person.

¶17 Finally, appellant suggests petitioner failed to satisfactorily establish the evaluating physicians' credentials. We disagree. Not only did appellant fail to object on this basis in the superior court and thus waived this argument, see *Reinen*, 198 Ariz. at 286, ¶ 9, 9 P.3d at 317, but the record includes sufficient proof of the physicians' credentials. Each physician's affidavit was signed, dated, "subscribed and sworn" before a notary public and stated the "affiant is a physician and is experienced in psychiatric matters." The affidavits also

identified the evaluating physicians as "M.D." and "D.O." In *In re MH 2009-001264*, appellant raised virtually the same argument regarding the physicians' qualifications. We rejected that argument there and we reject it here.

**CONCLUSION**

¶8 For the foregoing reasons, we affirm the treatment order.

/s/

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PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

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DIANE M. JOHNSEN, Presiding Judge

/s/

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PHILIP HALL, Judge