DIVISION ONE
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PHILIP G. URRY, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

	No. 1 CA-MH 09-0049
	DEPARTMENT B
IN RE MH 2009-001362	**MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2009-001362

The Honorable Patricia Arnold, Judge Pro Tempore

AFFIRMED

Andrew P. Thomas, Maricopa County Attorney — Phoenix
By Anne C. Longo, Deputy County Attorney
And Victoria Mangiapane, Deputy County Attorney
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Cory Engle, Deputy Public Defender
Attorneys for Appellant

S W A N N, Judge

¶1 The patient in this case appeals from the superior court's order, entered pursuant to A.R.S. § 36-540(A)(2), that he undergo involuntary mental health treatment in a combined inpatient and outpatient program. He argues that there was insufficient evidence to support the court's finding that he was unwilling or unable to accept voluntary treatment. We disagree and affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In May 2009, the appellant was apprehended by law enforcement for entering other people's houses early in the morning without permission, and was hospitalized for injuries he sustained while attempting to evade capture.

¶3 Christine Gesmundo, M.D., petitioned the superior court to order an evaluation of the appellant's mental health. Dr. Gesmundo alleged that there was reasonable cause to believe that the appellant was gravely disabled, persistently or acutely disabled, and a danger to himself or others. Along with the petition, a mental health crisis counselor submitted applications for involuntary evaluation and emergency admission for evaluation.

¶4 The court ordered that the appellant be detained in a psychiatric center and evaluated by two physicians. Evaluations were conducted by Lydia Torio, M.D., and Daniel Merrill, M.D.

Dr. Torio filed a petition for court-ordered treatment. The petition alleged that the appellant was persistently or acutely disabled and unwilling or unable to accept treatment voluntarily, and requested that he receive court-ordered combined inpatient and outpatient mental health treatment. Affidavits by Dr. Torio and Dr. Merrill were attached in support of the petition.

¶5 The court issued a detention order for treatment and a notice of hearing on the petition for court-ordered treatment. The day of the hearing, Dr. Torio filed an affidavit recording the medication that the appellant had received in the previous seventy-two hours. At the hearing, the appellant's case manager and a paramedic testified, and the appellant called a social worker to testify. Based on the evidence presented at the hearing and the doctors' affidavits, the superior court found by clear and convincing evidence that the appellant, as a result of a mental disorder, was persistently and acutely disabled and either unwilling or unable to accept voluntary treatment. Finding no appropriate and available alternatives, the court ordered that the appellant undergo involuntary treatment in a combined inpatient-outpatient treatment program not to exceed 365 days, with no more than 180 days of inpatient treatment.

¶6 The appellant timely filed a notice of expedited appeal. We have jurisdiction pursuant to A.R.S. §§ 12-2101(B) (2003) and 36-546.01 (2009).

DISCUSSION

¶7 We will affirm an order requiring involuntary treatment if it is supported by substantial evidence, and we will not set aside related findings unless they are clearly erroneous. *In re Pima County Mental Health Serv. No. MH-1140-6-93*, 176 Ariz. 565, 566, 863 P.2d 284, 285 (App. 1993). We view the evidence in the light most favorable to sustaining the order. *In re MH 2008-000438*, 220 Ariz. 277, 278, ¶ 6, 205 P.3d 1124, 1125 (App. 2009).

¶8 Pursuant to A.R.S. § 36-540(A), the superior court may order a person to undergo involuntary mental health treatment "[i]f the court finds by clear and convincing evidence that the proposed patient, as a result of mental disorder, is . . . persistently or acutely disabled . . . and in need of treatment, and is either unwilling or unable to accept voluntary treatment." Evidence of a patient's current behavior, although relevant, "is neither the sole nor the essential indication of the statutory criteria" because "[a] patient may not display any current aberrant behavior because of intensive therapy, supervision, and medication and yet pose a danger of harm to himself because of inability to make treatment decisions if

released from the therapeutically structured environment." *In re Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 444-45, 897 P.2d 742, 746-47 (App. 1995).

¶9 Here, the appellant concedes that he was "accurately found" to be persistently or acutely disabled, but contends that there was insufficient evidence to support the court's finding that he was unwilling or unable to accept voluntary treatment. He contends that "*all* the evidence points to [him] being able and willing to accept treatment." (Emphasis added.) We disagree.

¶10 To be sure, there was evidence from which the court could have concluded that the appellant was willing and able to accept voluntary treatment. Notably, the appellant's case manager testified that with the exception of a recent suicide attempt in which the appellant overdosed on his psychiatric medications, the appellant had been compliant with his treatment for the most part and was agreeable to receiving a higher level of services. The case manager acknowledged that after the suicide attempt, the appellant had promptly sought treatment. She opined that involuntary treatment would not be necessary so long as the appellant received medication monitoring, a service for which she had already initiated a request. Additionally, the social worker testified that she believed that the appellant would agree to voluntary inpatient treatment. According to the

social worker, since his detention the appellant had been agreeable and interested in obtaining additional services, and to her knowledge had neither refused medication nor threatened to harm himself.

¶11 There was, however, substantial evidence supporting the court's finding that the appellant was unwilling or unable to accept voluntary treatment. Dr. Torio, Dr. Merrill, and the case manager reported that the appellant admitted that he had stopped taking his psychiatric medications. He told Dr. Merrill that he had stopped taking his medications three weeks before he was apprehended because he wanted to make "a fresh start." The appellant also admitted to two suicide attempts in recent months. In at least one of those attempts, he overdosed on his medications.

¶12 Both Dr. Torio and Dr. Merrill concluded that the appellant has a severe mental disorder that substantially impairs his capacity to make an informed decision regarding treatment, and because of that impairment he is incapable of understanding the advantages and disadvantages of treatment and particular treatment alternatives. Dr. Torio explained that the appellant "has limited insight into his illness, and exhibited impulsive behavior and has exhibited poor judgment." Dr. Merrill explained that the appellant "states he has a [sic] periods of time where he wants to start over again and stop his

medications," and noted that he "has stopped taking [his] medications in the last three weeks and has stopped going to appointments."[1] Both doctors found that court-ordered treatment was warranted.

¶13 We conclude, therefore, that substantial evidence supported the court's order for involuntary treatment. We discern no clear error in the court's finding that the appellant was unable or unwilling to accept voluntary treatment.

[1] There is no indication in Dr. Merrill's report that the appellant admitted to Dr. Merrill that he had missed appointments for treatment. But in the petition for court-ordered evaluation, which both Dr. Merrill and Dr. Torio reviewed, Dr. Gesmundo noted that the appellant had missed recent appointments and described the appellant as inconsistent in his willingness or ability to accept voluntary treatment. Additionally, in the application for evaluation attached to the petition, the mental health crisis counselor noted that the appellant refused to meet with an urgent care center psychiatrist. The counselor also noted that according to the appellant's mother, the appellant had not been taking his medication and that was an ongoing problem for him.

CONCLUSION

¶14 For the reasons set forth above, we affirm.

/s/
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PETER B. SWANN, Judge

CONCURRING:

/s/
_____
PATRICIA K. NORRIS, Presiding Judge

/s/
_____
DANIEL A. BARKER, Judge