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: 06/24/10
PHILIP G. URRY, CLERK
BY: JT

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

	1 CA-MH 09-0055
	DEPARTMENT A
IN RE MH 2009-001377	**MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2009-001377

The Honorable Patricia Arnold, Judge Pro Tempore

AFFIRMED

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

Richard M. Romley, Maricopa County Attorney — Phoenix
By Anne C. Longo, Deputy County Attorney
And Roberto Pulver, Deputy County Attorney
Attorneys for Appellee State of Arizona

O R O Z C O, Judge

¶1 Appellant appeals from the trial court's order of commitment for involuntary mental health treatment. For the reasons set forth below, we affirm the order of commitment.

FACTS AND PROCEDURAL HISTORY

¶2 Appellant has been diagnosed with bipolar disorder and has previously received in-patient mental health treatment. On May 27, 2009, Appellant's half-sister, J.V., and Appellant's mother attempted to locate Appellant, who had been missing for a couple of days. J.V. and Appellant's mother found Appellant walking in "zigzags" and observed her "talking as if someone was right next to her." When J.V. attempted to embrace Appellant, Appellant became very angry. Appellant screamed at her mother and verbally threatened her. J.V. indicated that Appellant took her shoes off, "grinded her teeth" and looked like she wanted to hit J.V. as she "balled up her fist." Appellant then walked barefoot back to her home; J.V. made a telephone call to report a crisis situation and requested help.

¶3 On the same day, J.V. signed an application for emergency admission for evaluation pursuant to Arizona Revised Statutes (A.R.S.) section 36-524 (2009) and an application for involuntary evaluation pursuant to A.R.S. § 36-520 (2009). In the applications, J.V. explained that Appellant was off her medication and was self-medicating with marijuana. On May 28, 2009, Dr. H. filed a petition for court-ordered evaluation

pursuant to A.R.S. § 36-523 (2009). Dr. H. concluded on the basis of J.V.'s applications, there was reasonable cause to believe that as a result of a mental disorder, Appellant was a danger to herself and a danger to others.

¶4 On May 29, 2009, a detention order for evaluation and notice was issued pursuant to A.R.S. § 36-529.A (2009), and was served on Appellant the same day. On June 1, 2009, Dr. P. evaluated Appellant and found her to be suffering from a probable diagnosis of "Bipolar Disorder, Manic, Without Psychosis" and "Cannabis Abuse." Additionally, Dr. P. found Appellant to be a danger to others and persistently or acutely disabled (PAD). Dr. P. also noted that Appellant's thoughts, cognition and memory were impaired; Appellant's drug screen was positive for "marijuana, amphetamines, methamphetamines, and cocaine;" and Appellant had been observed having auditory hallucinations. Dr. S. also evaluated Appellant, and he found Appellant to be suffering from a probable diagnosis of "Bipolar Disorder, Manic" and also "Polysubstance Abuse." Dr. S. found Appellant was both a danger to others and PAD. Dr. S. commented that, based on his interview, Appellant was "spiritually preoccupied" and was "extremely delusional" as she stated, "I am guided by Allah, and I mean Allah because of Aladdin."

¶5 Dr. P. filed a petition for court-ordered treatment (PCOT) on June 2, 2009, pursuant to A.R.S. § 36-533 (2009). The

trial court held a hearing on the PCOT on June 8, 2009. The parties stipulated to (1) the admission of the physicians' affidavits in lieu of taking their testimony as required by statute; and (2) the sufficiency of the physicians' qualifications. After hearing all of the testimony and considering the evidence presented, the court found by clear and convincing evidence that Appellant was, as a result of a mental disorder, PAD and a danger to others. Additionally, the trial court found Appellant was in need of psychiatric treatment and was unable or unwilling to accept voluntary treatment. The trial court ordered combined inpatient/outpatient treatment not to exceed 365 days, with the maximum time for the inpatient treatment not to exceed 180 days.

¶6 Appellant timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21.A.1, -2101.K (2003) and 36-546.01 (2009).

DISCUSSION

¶7 Appellant argues the involuntary treatment order should be vacated on three bases because the trial court: (1) abused its discretion in finding Appellant was a danger to others; (2) failed to make express findings that Appellant knowingly, voluntarily, and intelligently waived her statutory right to have the evaluating physicians testify; and (3) failed

to ascertain whether the credentials of the evaluating physicians met the statutory requirements.

¶8 Appellant failed to raise issues two and three before the trial court "and we generally do not consider issues, even constitutional issues, raised for the first time on appeal." *Englert v. Carondelet Health Network*, 199 Ariz. 21, 26, ¶ 13, 13 P.3d 763, 768 (App. 2000); *see In re Pima County Mental Health Serv. No. MH-1140-6-93*, 176 Ariz. 565, 568, 863 P.2d 284, 287 (App. 1993) (arguments not raised below are usually deemed waived on appeal). We have discretion in deciding whether to consider arguments raised for the first time on appeal. *In re MH 2007-001275*, 219 Ariz. 216, 219, ¶ 11, 196 P.3d 819, 822 (App. 2008), *superseded by statute on other grounds*, A.R.S. § 36-539.B (Supp. 2009).

¶9 Because Appellant's argument regarding the trial court's finding that Appellant was a danger to others was raised before the trial court, we address it on appeal. In her reply brief, Appellant concedes that recent case law has resolved the issue that a trial court's failure to ascertain whether a potential patient knowingly, voluntarily, and intelligently waived her statutory right to have the evaluating physicians testify does not violate due process. *See In re MH 2009-001264*, ___ Ariz. ___, ___, ¶¶ 10-11, 229 P.3d 1012, 1015 (App. 2010).

We deem the remaining issue waived. *See MH-1140-6-93*, 176 Ariz. at 568, 863 P.2d at 287.

Finding Appellant a danger to others was not error

¶10 Appellant argues that the trial court abused its discretion when it found Appellant a danger to others. Specifically, Appellant contends that because the State, in its closing argument, indicated that it had not presented sufficient evidence to find Appellant a danger to others, the trial court erred in so finding.

¶11 On appeal, we review an order for involuntary treatment to determine if substantial evidence supports the order. *In re MH 2008-001188*, 221 Ariz. 177, 179, ¶ 14, 211 P.3d 1161, 1163 (App. 2009). We will not set aside a trial court's factual findings unless they are clearly erroneous or unsupported by substantial evidence. *In re MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995). For a court to order involuntary treatment, it must find by clear and convincing evidence that treatment is necessary. A.R.S. § 36-540 (Supp. 2009); *In re MH 2007-001236*, 220 Ariz. 160, 165, ¶ 15, 204 P.3d 418, 423 (App. 2008).

¶12 Prior to making its finding, the court noted that it considered both physicians' affidavits. Both physicians, as discussed above, concluded that, based on their interviews with Appellant, she was a danger to others. Specifically, Dr. P.

noted that Appellant had been "verbally abusive towards her mother and sister, requiring police intervention." Dr. S. noted that when asked about an altercation with her mother, Appellant stated, "You'd better believe it, I was mad." Dr. S. also noted that Appellant had reportedly "become extremely aggressive and threatening towards her mother." After announcing its finding, Appellant requested the trial court enumerate the facts that supported the finding that Appellant was a danger to others. The trial court specified that Appellant:

> [Was] in a threatening mode when she was approached by her sister and her mother. She took her shoes off. She was grinding her teeth. She was clinching [sic] her fist. She looked like she was going to hit the sister, and the sister said she was in fear and that she felt she may have to respond with physical aggression herself to – if the sister approached her.

¶13 Because we conclude that sufficient evidence supports the trial court's findings, we affirm the trial court's order of commitment.

CONCLUSION

¶14 For the reasons discussed above, we affirm the trial court's order of commitment for involuntary mental health treatment.

/S/
_____
PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/
_____
DANIEL A. BARKER, Judge

/S/
_____
LAWRENCE F. WINTHROP, Judge