DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

	No. 1 CA-MH 09-0064
	DEPARTMENT C
IN RE MH 2007-001113	**MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2007-001113

The Honorable Patricia Arnold, Judge *Pro Tem*

AFFIRMED

James J. Haas, Maricopa County Public Defender By Kathryn L. Petroff, Deputy Public Defender Attorneys for Appellant	Phoenix
Magellan Health Services of Arizona, Inc. By Steven B. Wiggs Attorneys for Appellee	Phoenix

D O W N I E, Judge

¶1 Appellant seeks reversal of an order continuing her involuntary mental health treatment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 Appellant has a lengthy history of psychiatric treatment, including twelve psychiatric admissions and eight court orders for treatment. In February 2007, appellant stopped taking her psychiatric medications. In June, she began hearing "command hallucinations telling her to pick up a gun or get a knife." Appellant expressed an intent to kill herself by jumping off a mountain or shooting or stabbing herself, but she refused voluntary treatment. Her case manager filed a petition for court-ordered evaluation, an application for involuntary evaluation, and an application for emergency admission for evaluation.

¶3 Dr. Michael Hughes filed a petition for court-ordered treatment, opining that appellant was a danger to self and persistently or acutely disabled. Dr. Hughes diagnosed appellant with schizoaffective disorder, posttraumatic stress disorder, bulimia nervosa, and borderline personality disorder. Although appellant continued to experience auditory hallucinations and suicidal ideations, she refused medications. A second evaluating physician diagnosed appellant with a psychotic disorder. Appellant told him she had "visual

[1] We view the facts in the light most favorable to affirming the trial court's decision. *In re MH 2008-001188,* 221 Ariz. 177, 179, ¶ 14, 211 P.3d 1161, 1163 (App. 2009).

hallucinations of dead people." She quit taking her medications "because she was doing well, and didn't like the side effects of weight gain, drooling, and slurred speech"; she believed it was a "coincidence" that her symptoms worsened when she stopped the medications. After a hearing, the court determined that appellant was a danger to self and persistently or acutely disabled, and it ordered combined inpatient and outpatient treatment for 365 days.

¶4 Appellant was released to outpatient treatment in July 2007. She initially did not take her medications, but was compliant with her appointments. In December, she was referred to an inpatient program for eating disorders; she was discharged three weeks later because she refused to eat and had continued suicidal ideations. The treatment team recommended continued treatment, and a petition for continued treatment was filed before the existing court order expired. Appellant did not object and declined a hearing. The court ordered continued treatment for 365 days. Appellant was initially compliant. By the end of that treatment term, though, she was only partially compliant with medications and had to be placed on injectable medication. The treatment team recommended renewal of the court order.

¶5 In June 2009, Dr. Carol Olson evaluated appellant.[2] Appellant was "guarded and evasive" during an interview. She denied "all symptoms, except for anxiety, in automatic fashion," but refused to rate the severity of her eating disorder symptoms or discuss a recent emergency room visit. Appellant believed she no longer had a mental illness and that treatment was not necessary; instead, she hoped to see a therapist to address anxiety, childhood abuse, and her eating disorder. Appellant thought medication was unnecessary, and if the court order expired, she intended to stop all psychiatric medications. Dr. Olson believed voluntary treatment was inappropriate because appellant lacked sufficient insight into her condition to recognize the need for treatment with psychiatric medication and hospitalization when her condition worsened. She recommended that appellant not be released from court-ordered treatment. A petition for continued treatment was filed, and appellant requested a hearing.

¶6 At the July 2, 2009 hearing, appellant stipulated to admitting Dr. Olson's affidavit in lieu of her testimony. Two acquaintance witnesses testified that appellant did well during the last treatment period, but said she had stopped taking her medication and would not resume taking it if the court order

[2] Dr. Olson had previously evaluated appellant in connection with the 2008 petition for continuing treatment.

expired. Appellant testified she believed the medications were unnecessary as long as she is asymptomatic. She believed she could recognize when she needed help or hospitalization.

¶7 The court found by clear and convincing evidence that appellant suffered from a mental disorder and was still persistently or acutely disabled and in need of treatment; it ordered continued treatment for 365 days. Appellant timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-2101(K) (2003) and 36-546.01 (2009).

DISCUSSION

¶8 Appellant contends the trial court erred by: (1) continuing her court-ordered treatment; and (2) failing to engage in a colloquy to determine whether she voluntarily, knowingly, and intelligently waived Dr. Olson's testimony. We review the interpretation of a statute *de novo, In re Mental Health 2008-001752,* 222 Ariz. 567, 569 n.3, ¶ 7, 218 P.3d 1024, 1026 n.3 (App. 2009) (citation omitted), and will uphold a treatment order if it is supported by substantial evidence. *Pima County Mental Health Service Action No. MH 1140-6-93,* 176 Ariz. 565, 566, 863 P.2d 284, 285 (App. 1993). We will affirm the trial court's findings of fact unless they are clearly erroneous or not supported by any credible evidence. *In re MH*

94-00592, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995) (citation omitted).

1. Renewal of Court-Ordered Treatment

¶9 Relying on A.R.S. § 36-543(E) (2009), appellant contends she was not subject to an annual examination because "nothing in the record shows that [the the medical director of the mental health treatment agency] determined that Appellant had been *substantially noncompliant* with treatment *during* the period of [court-ordered treatment]."[3] Appellant did not raise this argument in the trial court. An appellate court will not typically consider issues and theories not presented to the court below. *Richter v. Dairy Queen of S. Ariz., Inc.,* 131 Ariz. 595, 596, 643 P.2d 508, 509 (App. 1982) (citation omitted); *Alano Club 12, Inc. v. Hibbs,* 150 Ariz. 428, 431, 724 P.2d 47, 50 (App. 1986) (citation omitted). Because appellant

[3] Section 36-543(E) provides, in pertinent part:

> A patient who has been found to be persistently or acutely disabled and who is undergoing court-ordered treatment shall have an annual examination and review to determine whether the continuation of court-ordered treatment is appropriate if the medical director of the mental health treatment agency determines that the patient has been substantially noncompliant with treatment during the period of the court order.

failed to preserve this argument for purposes of appeal, we deem it waived.[4]

¶10 Appellant also implies she was improperly subjected to annual review because the director of the mental health treatment agency did not personally determine treatment compliance. *See* A.R.S. § 36-543(E) (requiring an annual review "if the medical director of the mental health treatment agency determines that the patient has been substantially noncompliant with treatment during the period of the court order"). However, A.R.S. § 36-503 (2009) allows the medical director to "deputize . . . any qualified psychiatrist or licensed physician on the staff of the agency to do or perform in his stead any act the medical director is empowered to do." Dr. Olson's report states she was "appointed by or on behalf of the Office of the Medical

[4] Even if we considered Appellant's new argument, we would find no error. The record includes sufficient evidence of noncompliance during the last treatment cycle. Appellant was "very resistant to taking psychiatric medications." Even when she suffered from "command hallucinations" and suicidal ideations, appellant did not believe she needed medication. By appellant's own admission, she would not take psychiatric medications if court-ordered treatment expired. Appellant was only partially compliant with medications during the last cycle and had to be placed on injectable drugs due to her refusal to take oral medication. Dr. Olson's 2009 report noted that appellant failed to acknowledge "any potential negative consequences to stopping all of her medication." Given appellant's history, her refusal to take medication could be considered "substantial noncompliance."

Director" to conduct the annual evaluation. Nothing in the record contradicts this claim.

2. Waiver of Testimony

¶11 Finally, appellant contends her due process rights were violated because the trial court failed to engage in a colloquy to determine whether she voluntarily, knowingly, and intelligently waived Dr. Olson's testimony. Appellant did not raise this argument below and indeed invited any arguable error. Moreover, our recent decision in *In re MH 2009-001264,* ___ Ariz. ___, ___, ¶ 11, 229 P.3d 1012, 1015 (App. 2010), is directly on point and is dispositive of appellant's new claim.

CONCLUSION

¶12 For the foregoing reasons, we affirm the order for continued involuntary mental health treatment.

/s/
MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/
DONN KESSLER, Judge

/s/
PETER B. SWANN, Judge