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



DIVISION ONE  
FILED: 06-03-2010  
PHILIP G. URRY, CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

IN RE MH 2009-001907 )  
 ) 1 CA-MH 09-0068  
 )  
 ) 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 ) (Not for Publication -  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 2009-001907

The Honorable Patricia Arnold, Judge Pro Tempore

**AFFIRMED**

Richard M. Romley, Maricopa County Attorney Phoenix  
By Anne C. Longo, Deputy County Attorney  
Roberto Pulver, Deputy County Attorney  
Civil Division  
Attorneys for Appellee

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

**H A L L**, Judge

¶1 Appellant challenges his involuntary treatment order.

For the reasons set forth below, we affirm.

## FACTS AND PROCEDURAL HISTORY

¶12           The facts relevant to the issue on appeal are as follows. On July 30, 2009, Diana Fletcher, M.D., petitioned the superior court seeking an involuntary inpatient mental health evaluation of Appellant. As set forth in the petition, Dr. Fletcher averred that there was reasonable cause to believe that Appellant has a mental disorder and is a danger to others. In addition, Dr. Fletcher noted that Appellant refuses medication and treatment and has a "history" of bipolar disorder and paranoid delusions. The next day, the superior court issued a detention order for Appellant's evaluation.

¶13           On August 4, 2009, Michael Hughes, M.D., petitioned the superior court seeking court-ordered treatment for Appellant. As set forth in the petition, Dr. Hughes averred that there was reasonable cause to believe that Appellant has a mental disorder, is persistently and acutely disabled, and is a danger to others.

¶14           On August 12, 2009, the superior court held a hearing on the petition for court-ordered treatment. After the petitioner's presentation of evidence and Appellant's testimony, the superior court found, by clear and convincing evidence, that Appellant "is suffering from a mental disorder and, as a result, is persistently and/or acutely disabled, is in need of treatment and is either unwilling or unable to accept voluntary treatment." The superior court also found, however, insufficient evidence to support the

allegation that Appellant is a danger to others and dismissed that allegation.

¶15 Appellant timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-2101(B) (2003) and 36-546.01 (2009).

#### DISCUSSION

¶16 As his sole issue on appeal, Appellant contends that the petitioner presented insufficient evidence to support the superior court's finding that he is persistently and/or acutely disabled. We disagree.

¶17 We uphold an order for treatment unless it is "clearly erroneous or unsupported by any credible evidence." *In re Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995). We review the record to determine whether the order is supported by substantial evidence. *Id.* at 446, 897 P.2d at 748.

¶18 A civil commitment constitutes a significant deprivation of liberty, *id.* at 447, 897 P.2d at 749, and therefore involuntary treatment proceedings must strictly meet the statutory requirements. *In re Maricopa County Superior Court No. MH 2001-001139*, 203 Ariz. 351, 353, ¶ 8, 54 P.3d 380, 382 (App. 2002). A patient is persistently or acutely disabled if the patient has a severe mental disorder that: (1) if left untreated, has a substantial probability of causing the patient to suffer severe and abnormal mental, emotional or physical harm that significantly

impairs judgment, reason, behavior or capacity to recognize reality; (2) substantially impairs the patient's ability to make decisions and understand the advantages and disadvantages of treatment; and (3) has a reasonable prospect of being treatable. A.R.S. § 36-501(33) (2009). The evidence to support a finding of persistent or acute disability must include "the 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).

¶19 At the outset of the hearing, the petitioner called Dr. Hughes as a witness. Dr. Hughes testified that he conducted a psychiatric evaluation of Appellant on July 30, 2009, the day after Appellant was admitted to Desert Vista hospital. During the evaluation, Dr. Hughes observed that Appellant was "slight[ly] irritabl[e]" and resistant to any psychiatric treatment. Appellant nonetheless cooperated with the interview and disclosed that he had a history of mania and depression but denied experiencing any associated symptoms presently. Appellant also admitted that he had "ongoing conflicts" with his family, but he denied making any threats toward family members. After meeting with Appellant and reviewing his medical history, Dr. Hughes diagnosed Appellant as suffering from a mood disorder not otherwise specified. Dr. Hughes

also concluded Appellant was a danger to others based on the allegations set forth in his father's sworn affidavit.

¶10 On cross-examination, Dr. Hughes acknowledged that in the four times he observed Appellant in the hospital he never demonstrated manic or depressive symptoms other than some slight irritability during the evaluation. Dr. Hughes also testified that Appellant was cooperative in taking his diabetes medication after the first day he was admitted and that Appellant also cooperated in taking the antibiotic he was prescribed to treat his recent bout of pneumonia. Although Appellant refused to take Depakote, a mood stabilizer, Dr. Hughes testified that Appellant had not demonstrated any of the behaviors or symptoms the medication is prescribed to treat. Finally, Dr. Hughes acknowledged that Appellant's behavior toward hospital staff and other patients had been appropriate.

¶11 After Dr. Hughes' testimony, the petitioner called Sami Ahad, M.D., to testify. Dr. Ahad testified that he also conducted a psychiatric evaluation of Appellant. During the examination, Appellant "admitted to having mood swings, . . . being irritable . . ., talkativeness, and . . . racing thoughts." Dr. Ahad also testified that, other than irritability, Appellant did not manifest those symptoms during the evaluation, but his concentration was poor and he appeared somewhat disheveled. Based on the evaluation and his review of Appellant's medical history, Dr. Ahad diagnosed

Appellant as suffering from a mood disorder not otherwise specified. Dr. Ahad also testified that he met with Appellant every day since his admission to the hospital and he had repeatedly observed Appellant's irritability, refusal to take medications, and failure to cooperate with medical treatment.

¶12 On cross-examination, Dr. Ahad acknowledged that Appellant has generally behaved appropriately at the hospital and never required physical or chemical restraint. Dr. Ahad also stated that his primary concern is that Appellant will "exhibit symptoms" when he experiences stress outside of the hospital setting.

¶13 The petitioner then called Appellant's father (Father) as a witness. He testified that he had not seen Appellant for approximately six months, but he became increasingly concerned about Appellant's welfare after he received a series of telephone calls in early July. During the first telephone call, Appellant was very agitated and referred to a "dead faggot." Father refused to answer telephone calls from Appellant at that point and Appellant began leaving "scary animalistic sounds" on the answering machine.

¶14 The petitioner then called Appellant's mother (Mother) as a witness. She testified that she had not seen Appellant for approximately two years because he "didn't want to have anything to do with [her]." She spoke with him on the phone in early May,

however, and Appellant repeatedly told her "This harassment has to stop." On May 19th, Mother received numerous "hang-up calls" that she believed were placed by Appellant. At approximately 3:00 a.m. the morning of May 27th, Appellant called Mother and "ranted and raved, and screamed at the top of his lungs." He told Mother that he was going to "come up there and kill you." The next day, Mother petitioned for a restraining order against Appellant. Appellant did not contact Mother again.

¶15 The petitioner then rested and Appellant's attorney moved to have the petition dismissed, which the superior court denied. Appellant then testified on his own behalf. He denied making the threatening phone calls alleged by his parents. Appellant also testified that he deals with his agitation, anxiety, and other symptoms through "push-ups, sit-ups, running in place, breathing exercises." When asked about his decision to not participate in mental health services, Appellant stated he did not "want the stigma attached with mental health."

¶16 Upon review of the record, we conclude the superior court's commitment order is supported by substantial credible evidence. Both of Appellant's physicians independently diagnosed him as suffering from a mood disorder not otherwise specified. In addition, each physician testified that Appellant has at times refused medication and medical treatment. Although his manifested symptoms are presently limited to irritability and poor

concentration, Appellant disclosed during his evaluation with Dr. Ahad that he has been experiencing mood swings and racing thoughts. Appellant's parents also testified that they have witnessed Appellant's mood swings and rage. Therefore, we cannot say the superior court erred in finding Appellant has a mental disorder and is persistently and/or acutely disabled.

**CONCLUSION**

¶17 For the foregoing reasons, we affirm the superior court's findings and order for treatment.

        /s/          
PHILIP HALL, Judge

CONCURRING:

        /s/          
DIANE M. JOHNSEN, Presiding Judge

        /s/          
PATRICK IRVINE, Judge