

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: 04/03/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

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

IN RE MH2011-001074

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) 1 CA-MH 11-0062
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) DEPARTMENT D
)
) **MEMORANDUM DECISION**
) Not for Publication -
) (Rule 28, Arizona Rules
) of Civil Appellate Procedure)
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Appeal from the Superior Court of Maricopa County

Cause No. MH2011-001074

The Honorable Veronica Brame, Judge

AFFIRMED

William G. Montgomery, Maricopa County Attorney Phoenix
By Anne C. Longo, Deputy County Attorney
and Bruce P. White, Deputy County Attorney
Attorneys for Appellee

Marty Lieberman, Maricopa County Legal Defender Phoenix
By Cynthia Dawn Beck, Deputy Legal Defender
Attorneys for Appellant

T H O M P S O N, Presiding Judge

¶1 Appellant appeals the trial court's order committing her to involuntary mental health treatment. For the following reasons, we affirm.

¶2 Appellant was brought to the emergency room after her sister found her on the floor of her apartment surrounded by pill bottles and with an altered level of consciousness. Appellant had a history of overdose attempts, a prior diagnosis of bipolar disorder and multiple prior voluntary admissions. Appellant refused voluntary admission and a Petition for Involuntary Evaluation was filed by Dr. Brunel, accompanied by an Application for Emergency Admission for Evaluation and an Application for Involuntary Evaluation both drafted by a TERROS social worker. The trial court ordered a Detention Order for Evaluation and Notice

¶3 Dr. Parker interviewed appellant and filed a Petition for Court-Ordered Treatment, attached to his petition was Dr. Duffy's affidavit based on his evaluation of appellant. The trial court held a hearing. At the hearing on May 5th, 2011, counsel stipulated to the admission of Dr. Duffy's and Dr. Parker's affidavits detailing their evaluations of appellant. In addition to the stipulation, two witnesses testified: appellant's case manager for Choices Network for the past three years and the TERROS social worker who evaluated appellant in the emergency room. Testimony was presented that she was non-

compliant with medication and appointments, hearing voices, delusional and suicidal. Following the hearing, the trial court found, by clear and convincing evidence, that appellant had a mental disorder, making her a danger to herself, in need of psychiatric treatment and unwilling or unable to accept voluntary treatment. The trial court ordered 365 days of mandatory treatment, with a maximum of 90 days inpatient detention. Appellant appealed.

¶4 Appellant argues on appeal that the trial court erred by ordering her into involuntary treatment. Appellant asserts two errors: failure to strictly comply with applicable statutes regarding a physical examination and ineffective assistance of counsel. We will not disturb an order for treatment unless it is "clearly erroneous or unsupported by any credible evidence." *Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995) (citations omitted).

¶5 Appellant asserts that the evaluating physicians failed to perform the complete physical examination required by Arizona Revised Statutes (A.R.S.) § 36-533(B) (2009). Pursuant to A.R.S. § 36-533(B), a petition for court-ordered treatment must be supported by the affidavits of two physicians who have conducted examinations of the patient. Prior to April 25, 2011, the statute required an examination, which was defined as "an exploration of the person's past psychiatric history and of the

circumstances leading up to the person's presentation, a psychiatric exploration of the person's present mental condition and a complete physical examination." A.R.S. § 36-501(14) (2010). Effective April 25, 2011, by emergency clause, the legislature amended A.R.S. § 36-533(B) to clarify that an affidavit must "include the results of the complete physical examination of the patient *if this is relevant to the evaluation.*" 2011 Ariz. Sess. Laws Ch. 219, § 2 (1st Reg. Sess.) (emphasis added); *see also In re MH 2008-000438*, 220 Ariz. 277, 280, ¶ 14 fn 3, 205 P.3d 1124, 1127 (App. 2009) (discussing requirements of a "complete physical examination"). The Petition for Court ordered treatment was filed two days after the effective date of the revised statute. The hearing on the petition was held on May 5, 2011, and the Order for Court-Ordered Treatment was issued on May 9, 2011. A physical exam was not statutorily required, but had it been it would have been waived on appeal due to the stipulation. *See In re MH 2009-001264*, 224 Ariz. 270, 272-73, ¶¶ 7-10, 229 P.3d 1012, 1014-15 (App. 2010) (finding waiver of the right to confront and cross-examine witnesses after appellant stipulated to the affidavits of the two physicians in lieu of their testimony).

¶6 Appellant next claims that her counsel below was ineffective. We disagree. A stipulation to admit the affidavits is permitted by statute. *See* A.R.S. § 36-539(B).

The statute at that time did not require a physical examination. See A.R.S. § 36-533(B). While this court has previously considered a claim of ineffective assistance of counsel in an involuntary mental health treatment case, the facts of that case were significantly different. *In re MH2010-002637*, 228 Ariz. 74, 263 P.3d 82 (App. 2011) (remand necessary where patient was not present for hearing and evidence admitted by stipulation). Appellant does not assert any specific failures of counsel nor show any prejudice by which we could find ineffective assistance of counsel here, particularly as the medical expert affidavits as well as the testimony of other witnesses about appellant's behavior constituted substantial evidence in support of the trial court's finding that appellant was a danger to herself.

¶7 For the foregoing reasons, we affirm.

/s/

JON W. THOMPSON, Presiding Judge

CONCURRING:

/s/

MAURICE PORTLEY, Judge

/s/

JOHN C. GEMMILL, Judge