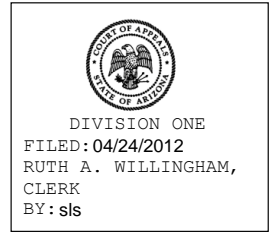


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE MH2011-001994) 1 CA-MH 11-0086
)
) DEPARTMENT C
)
) **MEMORANDUM DECISION**
) (Not for Publication
) - Rule 28, Arizona
) Rules of Civil
) Appellate Procedure)
)

Appeal from the Superior Court in Maricopa County

Cause No. MH2011-001994

The Honorable Veronica W. Brame, Commissioner

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 Colin F. Stearns, Deputy Legal Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 After conducting an evidentiary hearing, the superior court found by clear and convincing evidence appellant was, as a result of a mental disorder, persistently or acutely disabled,

in need of psychiatric treatment, and unwilling or unable to accept voluntary treatment. Accordingly, the court ordered appellant to undergo a combination of inpatient and outpatient treatment not to exceed 365 days ("treatment order").

¶12 On appeal appellant argues we should vacate the treatment order because she was not personally served with notice of the hearing on the petition for court-ordered treatment as required by Arizona Revised Statutes ("A.R.S.") section 36-536(A)(2009). The record before us, however, reflects appellant was served with the notice of hearing.

¶13 Appellant grounds her lack-of-service argument on the "return of order" contained in the un-amended record on appeal as it fails to show the date and time of service of the petition, detention order, and notice of hearing. At appellee's request, we stayed this appeal and revested jurisdiction in the superior court for the purpose of allowing it and the parties to settle the record regarding proof of service. After argument, the superior court "amend[ed]" the record to include a "copy of the Detention Notice that was served upon the Patient in this matter."¹ The "Detention Notice" identified by the superior

¹Although the superior court stated it was amending the record to include the "Detention Notice," it did not transmit a copy of that notice to this court for inclusion in the record on appeal. Appellee has, however, given this court a copy of the "Detention Notice" identified by the superior court.

court reflects appellant was served with the petition, detention order, and notice of hearing on July 27, 2011, more than 72 hours before the hearing on the petition for court-ordered treatment. And, we note, appellant and her counsel attended that hearing.

¶4 In another context, we have recognized, "It is not the return but the fact of service which gives the court jurisdiction. The return is merely evidence by which the court may be informed that the defendant has been served." *Brandt v. Daman Trailer Sales, Inc.*, 116 Ariz. 421, 422, 569 P.2d 851, 852 (App. 1977) (citation omitted). Here, the record as amended reflects appellant was served with the notice of hearing as required by A.R.S. § 36-536(A).

¶5 For the foregoing reasons, we affirm the superior court's involuntary mental health treatment order.

_____/s/

PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

_____/s/

MARGARET H. DOWNIE, Judge

_____/s/

MICHAEL J. BROWN, Judge