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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE PIMA COUNTY MENTAL HEALTH NO. MH- 4936-10-11	2 CA-MH 2011-0008 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Honorable Amy Hubbell, Court Commissioner

AFFIRMED

Barbara LaWall, Pima County Attorney
By Grant Winston
Tucson
Attorneys for Appellee

Ann L. Bowerman
Tucson
Attorney for Appellant

H O W A R D, Chief Judge.

¶1 Pursuant to a petition for court-ordered mental health treatment, the trial court found after a hearing that, as a result of a mental disorder, appellant is persistently or acutely disabled, a danger to others, and in need of mental health treatment. *See* A.R.S. §§ 36-533, 36-540. Finding appellant was unable or unwilling to comply with voluntary treatment, the court ordered that he receive treatment in a level two treatment facility for one year "with the ability to be re-hospitalized, should the need arise, in a level one behavioral health facility for a time period not to exceed 180 days."

¶2 The trial court, however, had initially rejected a treatment plan that would have placed appellant in an unsecured level two treatment facility, noting that appellant previously had failed to participate in outpatient treatment and to maintain contact with the treating agency, COPE Community Services. The court then recalled for further testimony appellant's treating psychiatrist, who had previously testified appellant was "mentally ready to be discharged from the hospital." The psychiatrist stated he had learned since his previous testimony that appellant recently had made several threatening telephone calls similar to those that had prompted the petitions for court-ordered evaluation and treatment and therefore "may revise [his] plan to discharge the patient at this time" and proposed "another hearing date to review how the patient has progressed with further inpatient treatment." The court continued the mental health hearing for approximately one week and, after the continued hearing, approved the treatment plan placing appellant in the level two facility.

¶3 Appellant does not assert the trial court erred in finding that, as a result of mental illness, he is acutely and persistently disabled and a danger to others nor that court-ordered treatment was required. To the extent appellant asserts the court erred in continuing the hearing, reasoning that the court had to adopt the treatment plan placing him at the level two facility at the conclusion of the first hearing because it was the least restrictive treatment available, this issue plainly is moot because the court ultimately adopted that treatment plan. *See Vinson v. Marton & Assocs.*, 159 Ariz. 1, 4, 764 P.2d 736 (App. 1988) ("A decision becomes moot for purposes of appeal where as a result of a change of circumstances before the appellate decision, action by the reviewing court would have no effect on the parties."). Although appellant complains that he was required to spend an additional week at a level one facility, he does not cite any authority or otherwise explain how this supports his requested relief of overturning the commitment order. Accordingly, we do not address this argument further. *See Arpaio v. Maricopa Cnty. Bd. of Supervisors*, 225 Ariz. 358, ¶ 7, 238 P.3d 626, 629 (App. 2010) ("Recognizing and declining to rule on moot issues is a 'discretionary policy of judicial restraint.'"), *quoting Fisher v. Maricopa Cnty. Stadium Dist.*, 185 Ariz. 116, 119, 912 P.2d 1345, 1348 (App. 1995).

¶4 Appellant also appears to suggest the underlying order for mental health treatment is defective because the trial court continued the hearing after recalling the

appellant's psychiatrist to provide further testimony about the treatment plan.[1] Appellant cites no authority suggesting this procedure was impermissible and, in any event, did not object below. Accordingly, he has waived this argument on appeal. *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 usually deemed waived on appeal); *see also* Ariz. R. Civ. App. P. 13(a)(6) (appellate brief argument shall contain "citations to the authorities, statutes and parts of the record relied on"); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (appellant's failure to develop and support argument waives issue on appeal).

¶5 And, to the extent appellant claims the trial court erred by failing to order outpatient treatment instead of approving a plan placing him at the level two facility, he made no such argument below. This argument is therefore waived. *See Pima County No. MH-1140-6-93*, 176 Ariz. at 568, 863 P.2d at 287.

¶6 Moreover, we find no error. Although § 36-540(B) requires a trial court to adopt the least restrictive treatment alternative available, the statute also requires a court to consider "available and appropriate" treatment alternatives. Further, a court may not order outpatient treatment absent a finding that the proposed patient "will follow a prescribed outpatient treatment plan." § 36-540(C)(1)(c). Appellant's psychiatrist and COPE case manager both recommended placement at the level two facility, and the case

[1]Appellant's claim that the trial court "encourag[ed] [his psychiatrist] to change his medical testimony" is wholly unsupported by the record.

manager further testified that appellant had not participated in previous court-ordered outpatient treatment nor consistently maintained contact with COPE. Thus, the court's implicit conclusion that outpatient treatment alone would have been inappropriate was amply supported by the record. *See In re MH 2008–001188*, 221 Ariz. 177, ¶ 14, 211 P.3d 1161, 1163 (App. 2009) (reviewing court views "facts in the light most favorable to sustaining the trial court's judgment" and "will affirm the [trial] court's order for involuntary treatment if it is supported by substantial evidence").

¶7 For the reasons stated, we affirm the trial court's orders mandating that appellant receive psychiatric treatment and its order approving his placement at a level two treatment facility.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge