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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-2010-0837	)	2 CA-MH 2012-0005
	)	DEPARTMENT B
	)	
	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Honorable Julia Connors, Court Commissioner

REVERSED

Mental Health Defender's Office
By Ann L. Bowerman
Tucson
Attorneys for Appellee

Kathleen Dostalik
Tucson
Attorney for Appellant
Community Partnership of Southern Arizona

V Á S Q U E Z, Presiding Judge

¶1 At a February 2012 hearing conducted pursuant to a petition for court-ordered mental health treatment, appellee's attorney informed the trial court that appellee wished to waive the right to a hearing and stipulate to undergo court-ordered treatment. The court found that, as a result of a mental disorder, appellee 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 appellee was willing but unable to comply with voluntary treatment, the court approved a one-year outpatient treatment plan, to be administered by La Frontera, an agency supervised by appellant Community Partnership of Southern Arizona (jointly referred to as CPSA).

¶2 CPSA appeals from the trial court's order requiring it to provide to the court[1] proof of compliance with the statutory requirement that appellee be notified of his right to periodic judicial review and the right to consult with counsel and to send a copy of such proof, including the patient's current address, to appellee's attorney who is with the Mental Health Defender's Office (MHDO).[2] *See* A.R.S. §§ 36-546(B), 36-540(E)(5).[3] We review the court's exercise of judicial discretion for an abuse of

[1]Although at oral argument CPSA withdrew its objection to providing the ordered notice to the court, we are not bound by its change of position.

[2]Notification is provided in a form entitled "Notification of Member's Right to Request Judicial Review and Right to Speak to Legal Counsel." At issue in this case is notification when, acknowledging, "I have been informed of my right to Judicial Review and right to speak with Legal Counsel," the patient checks the box indicating, "I do not request a Judicial Review at this time."

[3]Section 36-546(B) provides:

discretion. *In re MH 2005-001290*, 213 Ariz. 442, ¶ 5, 142 P.3d 1255, 1266 (App. 2006). For the reasons stated below, we reverse.

¶3 In the February 2012 order imposing court-ordered treatment,[4] the trial court ordered CPSA to "notify the [MHDO] every sixty days when the patient is notified of his right to judicial review." The following week, CPSA filed a motion asking the court to reconsider its order requiring it to provide the MHDO with a copy of proof of compliance, asserting "[t]here is no affirmative duty to do so in the statute and this would be an extreme burden on the behavioral health system . . . and [t]he statute provides [the MHDO] with the ability to request medical records related to its client." The MHDO then filed a response and cross-motion for reconsideration on behalf of appellee. In it, the MHDO acknowledged that the statute does not impose an affirmative duty on CPSA

> The patient shall be informed of the patient's right to judicial review by the medical director of the agency and the patient's right to consult with counsel at least once each sixty days while the patient is undergoing court-ordered treatment. The notification required by this subsection shall be recorded in the clinical record of the patient by the individual who gave the notice.

In addition, § 36-540(E)(5) provides, in relevant part:

> If a patient is ordered to undergo inpatient treatment pursuant to an amended order, the medical director of the outpatient treatment facility shall inform the patient of the patient's right to judicial review and to consult with an attorney pursuant to [§] 36-546.

[4]Because the facts leading to the imposition of court-ordered treatment are not disputed, we do not discuss them in this decision.

to notify the patient's attorney when the statutorily required notice has been provided to the patient. The MHDO nonetheless asserted that, absent such notice, it would have "to either review every client's file at his or her agency every 60 days or . . . routinely request judicial reviews for each and every client every 60 days" in order to ensure its clients had received notification. The MHDO also explained that, by requiring CPSA to send a copy of the proof of compliance to the MHDO, which could be sent via facsimile, the MHDO would be able to both assure CPSA had complied with the statute and to monitor its clients' whereabouts, a difficult task at best. In its cross-motion for reconsideration, the MHDO requested that the court's order apply not only while appellee was undergoing outpatient treatment, but also if his treatment is revoked pursuant to § 36-540(E)(5).

¶4 We view the evidence and all reasonable inferences therefrom in the light most favorable to affirming the trial court's rulings. *See In re MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d 1161, 1163 (App. 2009). After conducting a hearing on the motion and cross-motion, the trial court concluded that § 36-546(B) does not require notice be sent to the patient's attorney acknowledging the patient was provided with notice of the right to judicial review and to confer with counsel. After noting that the patient's attorney generally "is not discharged" once court-ordered treatment is imposed because of the possibility of future judicial review, and that A.R.S. § 36-509(C), grants the patient's attorney ongoing access to the patient's file, the court nonetheless ruled:

> Counsel have both argued that the Court should consider the relative burdens on each of their offices of either imposing a requirement of notification of counsel each time a

patient is offered judicial review versus the alternative of counsel for the patient either reviewing every client's file at his or her agency every 60 days or in the alternative, routinely requesting a hearing on judicial review in every case to ensure the patient's rights are being protected.

In weighing the arguments, the unambiguous statutory requirements, the parties' relative administrative burdens, this court's inherent authority to enforce its orders, and, more importantly, due process considerations, the court rules as follows:

REGARDING THE MOTION FOR RECONSIDERATION:

IT IS ORDERED denying the Motion for Reconsideration in part. The Court rescinds its order that directed notification be made to [appellee's] attorney. Rather, the medical director of the treatment agency shall file with the Court, proof of compliance with the statutory requirement that [the patient] has been notified of his right to judicial review and right to consult with counsel every sixty days, and at any time [appellee] has been hospitalized pursuant to a revocation of an outpatient treatment order, [*see*] A.R.S. § 36-540(E). The proof of notification shall include a current address of [appellee] and a copy shall be provided to defense counsel.

REGARDING THE CROSS[-]MOTION FOR RECONSIDERATION:

IT IS FURTHER ORDERED denying the Cross[-] Motion for Reconsideration in part. The mental health treatment agency shall not be required to send a copy of the . . . Request for Judicial Review form signed by [appellee] to his attorney via facsimile.

¶5 On appeal, CPSA argues the trial court abused its discretion by ordering it to provide proof of compliance to the court and to send a copy of such compliance to the

MHDO. Directing us to numerous places in the mental health statutes where the legislature expressly has required that specific filings or notice be provided to the court, CPSA asserts correctly that the notice ordered by the court here is notably missing from the statutes. Similarly, A.R.S. § 36-537(A), discussing the powers and duties of counsel, contains a list of the specific items the medical director is required to provide to the patient's attorney before the evaluation hearing, but makes no reference to the notice required by the court here. Therefore, CPSA argues, although the legislature could have imposed such a notice, it did not do so.

¶6 Additionally, the parties agree, and the trial court found, that no language in the otherwise unambiguous statute at issue, § 36-546(B), authorizes a judge to order a medical provider to notify the court and the patient's attorney that the patient has been informed of the right to judicial review. Although the court relied, in part, on its "inherent authority to enforce its orders" to justify its ruling, and while we agree "[e]very court has inherent power to do those things which are necessary for the efficient exercise of its jurisdiction," *Fenton v. Howard*, 118 Ariz. 119, 121, 575 P.2d 318, 320 (1978), that authority is not unfettered. And notably, there is nothing in the record on appeal to suggest CPSA did not comply with § 36-546(B) in this case.[5] We thus reject appellee's argument that the court was merely increasing the minimum standard set forth in § 36-546(B) in order "to ensure that the statutory scheme is carried out as written."

[5]We point out that this decision does not address the propriety of a trial court's exercise of its inherent authority in the case where the medical provider has failed to comply with A.R.S. § 36-546(B).

"[I]nherent powers should be exercised with particular caution when their use infringes on the authority of other branches of government." *Arpaio v. Baca*, 217 Ariz. 570, ¶ 23, 177 P.3d 312, 319 (App. 2008).

¶7 We cannot see, nor did the trial court explain, how requiring CPSA to provide notice to the court and the MHDO reasonably falls within the court's inherent authority to assure CPSA is carrying out the statutory notice requirement or is "'necessary to the ordinary and efficient exercise of [the court's] jurisdiction,'" *Owen v. City Court of City of Tucson*, 123 Ariz. 267, 269, 599 P.2d 223, 225 (1979), *quoting State v. Superior Court*, 39 Ariz. 242, 247-48, 5 P.2d 192, 194 (1931). "A court's inherent authority is largely unwritten; appellate affirmation of an exercise of that authority ordinarily is grounded on trial court findings and conclusions which explain its actions." *Acker v. CSO Chevira*, 188 Ariz. 252, 255, 934 P.2d 816, 819 (App. 1997). In the context of the mental health statutes in Title 36, the legislature has created a detailed and precise statutory scheme. *In re Maricopa Cnty. Superior Court No. MH 2001-001139*, 203 Ariz. 351, ¶ 12, 54 P.3d 380, 382 (App. 2002), *citing In re Coconino Cnty. Mental Health No. MH 95-0074*, 186 Ariz. 138, 139, 920 P.2d 18, 19 (App. 1996). And, "[t]he legislature is well aware that we have required parties to comply with [the provisions of Title 36] with exactness given the liberty interests at issue." *Id.* ¶ 15.

¶8 Because the trial court's ruling orders conduct not contained in the provisions of an otherwise unambiguous statute that is part of a precise statutory scheme, it constitutes an abuse of the court's discretion. *See, e.g., Graville v. Dodge*, 195 Ariz.

119, ¶ 41, 985 P.2d 604, 613 (App. 1999) (addressing whether trial court's exercise of inherent authority unconstitutional in context of grandparents' visitation rights). "As a rule of statutory construction, we will not read into a statute something which is not within the manifest intent of the legislature as indicated by the statute itself . . . [n]or will we inflate, expand, stretch or extend a statute to matters not falling within its express provisions." *City of Tempe v. Fleming*, 168 Ariz. 454, 457, 815 P.2d 1, 4 (App. 1991) (internal citations and quotations omitted); *cf. Bergeron ex rel. Perez v. O'Neil*, 205 Ariz. 640, ¶ 29, 74 P.3d 952, 962 (App. 2003) (court may not use inherent authority to supplement procedural rule when doing so frustrates intent of rule). Accordingly, because we conclude the court's order directing CPSA to send a copy of the proof of compliance to the court and the MHDO cannot be affirmed as a proper exercise of the court's inherent authority, we reverse.

¶9 Although we acknowledge the inherent difficulty the MHDO experiences in representing a vulnerable population, whose members are often unable to communicate clearly with counsel, and that the portion of the trial court's order directing CPSA to notify the MHDO that the patient has been advised of its right to judicial review would be both practical and helpful, the court's ruling nonetheless is legally unsupportable. When exercising its inherent authority to further justice, a court must do "'no more than is reasonably necessary.'" *Id.* ¶ 28, *quoting In re Alamance Cnty. Court Facilities*, 405 S.E.2d 125, 132 (N.C. 1991) ("court's exercise of its inherent power must be responsible[and]even cautious"). Additionally, to the extent the court considered "the parties'

relative administrative burdens" in rendering its ruling, another factor of which we are mindful, that factor did not play a proper role in the court's exercise of its inherent authority. *See In re Clerk of Court's Comp. for Lyon Cnty. v. Lyon Cnty. Comm'rs*, 241 N.W.2d 781, 786 (Minn. 1976) (court's use of inherent authority to set salary for court employee not supportable based on "judicial wants, but practical necessity in performing the judicial function").

¶10 CPSA also claims the trial court erred by finding due process is violated if CPSA does not provide the court and the MHDO with proof of compliance. We are not persuaded by CPSA's assertion that "[i]f an individual is not requesting Judicial Review of the court order for mental health treatment no liberty interests are at issue." *See In re MH 2004-001987*, 211 Ariz. 255, ¶ 20, 120 P.3d 210, 214-15 (App. 2005) (person involved in civil commitment proceeding entitled to procedural due process protections). However, we nonetheless cannot affirm the court's order based on due process.

¶11 As CPSA correctly points out, not only is a patient requesting release from court-ordered treatment guaranteed an attorney, *see* A.R.S. § 36-546(F), that attorney is permitted access to the patient's clinical record, in which CPSA is required to record the notice at issue here, thereby protecting the patient's due process rights. Moreover, the Arizona Administrative Code also provides to persons with serious mental illnesses "[t]he right to appeal a court-ordered involuntary commitment and to consult with an attorney and to request judicial review of court-ordered commitment every 60 days," Ariz. Admin. Code foll. R9-21-211, Exh. A, and "[t]he right to assert grievances with

respect to infringement of these rights," *id.* R9-21-201(A)(12); *see also id.* R9-21-401 through R9-21-409. Because the relevant portions of the statutes and Administrative Code expressly provide numerous due process protections to patients like appellee, we infer the authors were mindful of the patients' due process rights when they implemented those provisions, and we likewise infer they did not see fit to provide the notice requirements imposed by the court here.

¶12 Accordingly, we reverse the trial court's order directing CPSA to provide the court and the MHDO with proof that appellee has been apprised of his right to judicial review and to consult with counsel.

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

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge