

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE PIMA COUNTY MENTAL HEALTH NO. MH200002091113

No. 2 CA-MH 2015-0005
Filed May 23, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f)

Appeal from the Superior Court in Pima County
No. MH200002091113
The Honorable Peter W. Hochuli, Judge

AFFIRMED

COUNSEL

Mental Health Defender's Office, Tucson
By John Nolasco
Counsel for Appellant

Nuccio & Shirly, P.C., Tucson
By Jeanne Shirly
Counsel for Appellee

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 P.B. appeals from the trial court's order that she continue to undergo involuntary mental health treatment. *See* A.R.S. §§ 36-533, 36-540(A), 36-543(D). She argues the court erred in finding she was persistently or acutely disabled pursuant to A.R.S. § 36-501(31) because her psychiatrist did not adequately explain to her the alternatives to offered treatment or the advantages and disadvantages of those alternatives, as required by A.R.S. §§ 36-543(H) and 36-501(31). We affirm.

¶2 P.B. has been undergoing court-ordered treatment for schizophrenia since June 2013. In April 2015, Frederick Mittleman, M.D., conducted a psychiatric review of P.B. for her provider, CODAC Behavioral Health Services. He concluded P.B. remained persistently and acutely disabled as a result of her schizophrenia and recommended that she remain in court-ordered treatment. Community Partnership of Southern Arizona, on behalf of CODAC, then filed a petition for continued treatment. After a hearing in September 2015, the trial court granted the petition, finding P.B. continued to be persistently and acutely disabled and should remain in treatment until June 2016. This appeal followed.

¶3 We will affirm an involuntary commitment order if it is supported by substantial evidence, viewing that evidence in the light most favorable to upholding the trial court's ruling. *See In re MH 2008-000438*, 220 Ariz. 277, ¶ 6, 205 P.3d 1124, 1125-26 (App. 2009). "We review, however, the application and interpretation of statutes de novo." *Id.* "[I]nvoluntary treatment proceedings may result in a serious deprivation of appellant's liberty interests." *In re*

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Maricopa County Mental Health No. MH 2001-001139, 203 Ariz. 351, ¶ 8, 54 P.3d 380, 382 (App. 2002). Thus, the applicable statutes must be carefully followed. *In re Maricopa County Mental Health No. MH 2003-000058*, 207 Ariz. 224, ¶ 12, 84 P.3d 489, 492 (App. 2004). Relevant here, for a court to find a person acutely and persistently disabled by a mental disorder and that court-ordered treatment is required, there must be substantial evidence that the person is:

incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

§ 36-501(31)(b); *see also* § 36-540(A); *In re Maricopa County Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 445-46, 897 P.2d 742, 747-48 (App. 1995).

¶4 P.B. argues the trial court's finding that she is acutely and persistently disabled is "negate[d]" because Dr. Mittleman identified other medications that could treat her condition but did not explain to her the specific advantages and disadvantages of those medications. P.B.'s argument ignores, however, that Mittleman concluded medication is a necessary part of her treatment and that she has stated she would not take medications absent a court order, refuses alternative medications or medication to control side effects, and would not reliably take oral medications and thus has to be medicated by injection—thereby interfering with a transition to alternative medications. P.B. has cited no authority, and we find none, suggesting that strict compliance requires that a patient be advised of the advantages and disadvantages of all available medications when the patient will not voluntarily comply with any treatment plan involving medication. "We will not . . . apply the law in a manner resulting in absurdity or impossibility; to do so would be contrary to legislative intent." *In re Pima County*

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Mental Health No. MH-1140-6-93, 176 Ariz. 565, 568, 863 P.2d 284, 287 (App. 1993).

¶5 P.B. has been repeatedly advised, including by Dr. Mittleman personally in the course of a long-time doctor-patient relationship, that she must take medication to control her symptoms. She also has been advised there are alternative medications available. P.B. has nonetheless consistently refused to voluntarily accept treatment via medication. In such circumstances, it would be useless and absurd to require her physician to list all possible medications and their advantages and disadvantages in order to comply with the statutory requirements.¹ Thus, we find no error in the trial court's determination that P.B. has been adequately advised of alternative treatments and the advantages and disadvantages of those treatments.

¶6 The trial court's order that P.B. continue to undergo involuntary treatment is affirmed.

¹ We do not suggest that P.B.'s conduct rendered it unnecessary for Dr. Mittleman to discuss a treatment plan or alternatives with her, only that he was not required to address all available medications in light of her refusal to take any medication. See *In re Maricopa County Mental Health Case No. MH 94-00592*, 182 Ariz. at 446, 897 P.2d at 748 (explanation of treatment plan and alternatives unnecessary if patient engages in "excessive verbal abuse, physical abuse, repeatedly walking away when the physicians attempt to discuss the matters, or nonresponsiveness").