

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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IN RE PIMA COUNTY MENTAL HEALTH No. MH20030403514

No. 2 CA-MH 2016-0003  
Filed September 12, 2016

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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NOT FOR PUBLICATION  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)

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Appeal from the Superior Court in Pima County  
No. MH20030403514  
The Honorable Wayne E. Yehling, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

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

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

**MEMORANDUM DECISION**

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

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H O W A R D, Presiding Judge:

¶1 I.I. appeals from the trial court's order that he continue to undergo involuntary mental health treatment. *See* A.R.S. §§ 36-533, 36-540(A), 36-543(D). He argues the court erred in finding he was persistently or acutely disabled pursuant to A.R.S. § 36-501(31) because his physician did not adequately explain to him the advantages of accepting treatment, alternatives to the offered treatment, or the advantages and disadvantages of those alternatives, as required by A.R.S. §§ 36-543(H) and 36-501(31). He further asserts there is insufficient evidence of "recent testing" of his incapacity to make informed decisions about his treatment. We affirm.

¶2 I.I. has been undergoing court-ordered treatment for schizophrenia since at least 2012. In December 2015, Dr. Frederick Mittleman completed a psychiatric review of I.I. for his provider, CODAC Behavioral Health Services. He concluded I.I. remained persistently and acutely disabled as a result of his schizophrenia and recommended that he remain in court-ordered treatment. CODAC then filed a petition for continued treatment. After a hearing in February 2016, the trial court granted the petition, finding I.I. continued to be persistently and acutely disabled and should remain in treatment until January 2017. 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 (App. 2009). "We review, however, the application and interpretation of statutes

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de novo.” *Id.* “[I]nvoluntary treatment proceedings may result in a serious deprivation of appellant’s liberty interests.” *In re Maricopa Cty. 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 Cty. 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 is acutely and persistently disabled by a mental disorder and that court-ordered treatment is required, there must be clear and convincing 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 Cty. Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 445-46, 897 P.2d 742, 747-48 (App. 1995).

¶4 We find ample evidence in the record to support the trial court’s conclusion that Dr. Mittleman adequately explained the advantages and disadvantages of I.I. accepting treatment, the availability of alternative treatments, and the advantages and disadvantages of those alternatives. I.I. has been repeatedly advised, including by Dr. Mittleman personally in the course of a long-term, doctor-patient relationship, that he must take medication to control his symptoms. He also has been advised there are alternative medications available; indeed, I.I. has experience with alternative medications and it was determined he suffered the fewest side effects on his current medication. Although I.I. has expressed a “superficial” understanding that he requires medication, he has failed to voluntarily take medication when he was not subject to court order. Thus, we find no error in the court’s determination that I.I. has been adequately advised as to his current treatment and treatment options.

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¶5 I.I. additionally asserts that there is insufficient evidence of “recent testing” of his capacity to make an informed decision regarding treatment. See *In re Pima Cty. Mental Health No. MH20130801*, 237 Ariz. 152, ¶ 35, 347 P.3d 598, 605 (App. 2015). As we have explained, however, the record shows Dr. Mittleman and others have regular therapeutic contact with I.I. and that both his schizophrenia and inability to make his own treatment decisions persist. I.I. has not explained what other evidence is required.

¶6 The trial court’s order that I.I. continue to undergo involuntary treatment is affirmed.