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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 MH-20110196	2 CA-MH 2011-0006 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure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 Barbara S. Burstein
Tucson
Attorneys for Appellee

Ann L. Bowerman
Tucson
Attorney for Appellant

B R A M M E R, Judge.

¶1 After a hearing, appellant was found to be a danger to others, persistently or acutely disabled, and in need of a period of mental health treatment as a result of a mental disorder. *See* A.R.S. §§ 36-533, 36-540. Finding appellant was unable or unwilling to comply with treatment on a voluntary basis without a court order, the trial court ordered him to receive "treatment 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" and subsequently approved a treatment plan. Appellant challenges the court's orders, claiming the evidence was not clear and convincing that he was a danger to others. We affirm for the reasons stated below.

¶2 We view the evidence and all reasonable inferences 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). A receptionist for the Pima County Board of Supervisors received a threatening telephone call on February 28, 2011, from a person subsequently identified as appellant. Appellant told her he was going to shoot her with his rifle.

¶3 Pima County Sheriff's Detective Aaron Cross investigated the threatening call to the receptionist at the Pima County Board of Supervisors. He determined appellant had made the calls and on March 7, 2011, after talking to appellant, Cross filed an application for involuntary mental health examination pursuant to A.R.S. § 36-520. In the application Cross summarized the threats and noted appellant did not believe he was psychotic, despite reports to the contrary by medical staff at the Pima County Jail. Cross also stated in the application appellant was homeless, had a history of mental health issues, smelled foul, was behaving erratically, and required supervision.

¶4 Mary Hayward, a licensed clinical social worker from Southern Arizona Mental Health Corporation (SAMHC) conducted a mental health screening. The medical director of SAMHC then filed a petition for court-ordered evaluation pursuant to A.R.S. § 36-523. After the court granted the application and petition, two psychiatrists evaluated appellant: Dr. Kathryn R. Sanderlin and Dr. David L. Stoker. Dr. Sanderlin filed a petition for court-ordered treatment pursuant to A.R.S. § 36-533, which the trial court granted on March 31, 2011, after a hearing. The court found, inter alia, that appellant was a danger to others as a result of a mental condition.

¶5 On appeal, appellant contends the evidence was not clear and convincing that he is a danger to others. He relies on testimony of Dr. Sanderlin that he claims was insufficient and similar testimony by Dr. Stoker, as well as his own contention that he never said he was going to kill anyone and meant something entirely different when he referred to his "M-16 rifle."

¶6 As appellant correctly asserts, the evidence supporting an order for involuntary treatment must be clear and convincing. A.R.S. § 36-540; *see also In re Maricopa Cnty. No. MH 2007-001236*, 220 Ariz. 160, ¶ 15, 204 P.3d 418, 423 (App. 2008). If the factual findings upon which such an order is based are not clearly erroneous and are supported by substantial evidence, we will affirm the order on appeal. *See In* re *MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d 1161, 1163 (App. 2009).

¶7 In the report Dr. Sanderlin prepared after initially evaluating appellant, she summarized the events that had resulted in the filing of the application. Dr. Sanderlin specified, inter alia, that in addition to threatening the receptionist, appellant had also contacted Senator Jon Kyl's office and had "inform[ed] them that Korean assassins tried to cut off black men's penises." She testified appellant had "rambled on incoherently,"

adding that "his speech [was] hyperverbal, pressured, very tangential," and that he "jump[ed] from subject to subject." She described his nonsensical answers to her various questions and described his delusional thoughts. Dr. Sanderlin diagnosed appellant as having schizoaffective disorder, bipolar type, and concluded he was experiencing a manic episode. She added that he appeared "to be threatening to others, according to the allegations here on the ward," but when she was dealing with him he was "redirectable" and "polite." In her affidavit, which was also attached to the petition, Dr. Sanderlin avowed, "The conclusion that the proposed patient is dangerous or disabled is based on the following: The patient was petitioned as a danger to others due to the patient being psychotic, living out of his car, odorous, erratic behaviors and delusional beliefs."

¶8 Dr. Sanderlin's testimony was consistent with her report and affidavit. She was asked on direct examination whether it was likely appellant would harm others. In response, she noted the threats he had made, pointing out appellant had denied he intended to hurt anyone and explained an M-16 was not a firearm but a code word for the Central Intelligence Agency. As appellant correctly points out, when asked again about appellant's dangerousness, Dr. Sanderlin said, "I'm not sure. I don't know his past," about which he had been "secretive" and "guarded." But she then added that his answers to various questions reflected that he was "very paranoid" and stated, "[s]o the allegations are very strong." During cross-examination she explained that by "paranoid" she meant he was "suspicious and he misreads other people's actions and intentions, that we are somehow out to get him or untrustworthy."

¶9 Dr. Stoker's report was similar to Dr. Sanderlin's. He, too, diagnosed appellant with schizoaffective disorder. He concluded appellant was a danger to others as well as himself, noting appellant was "agitated, angry, irritable, hyperverbal, paranoid,

delusional, tangential, circumstantial, and rambling." His testimony was consistent with his report. He believed appellant's mental disorder affected his behavior and ability to reason. When Dr. Stoker was asked whether, if untreated, appellant was likely to cause serious harm to others, he responded, "I think there's a risk," given the threats he had made and the calls to Senator Kyl's office, and the fact that he was psychotic. Like Dr. Sanderlin, he emphasized appellant was paranoid, his thought process was impaired, and he demonstrated mood instability.

¶10 Mary Hayward, the clinical social worker from SAMHC, testified she had evaluated appellant on March 4 while he was on the mental health unit of the Pima County Jail. She stated that appellant had told her he did not want to hurt anyone. Like both psychiatrists, she stated his speech was pressured and his thought process was "very quick[], almost as if he couldn't keep up with what he was thinking." She also found him to be polite and cooperative.

¶11 The receptionist from the Pima County Board of Supervisors office testified about the threatening telephone call she had received from appellant on February 28. She described him as having covered many disconnected subjects, "speaking faster and faster," and stated she had been unable to understand what he was saying and was unable to interrupt him to explain she did not understand. When she finally did interrupt him, he told her three times he was going to shoot her with his M-16 rifle.

¶12 Finally, Detective Cross testified about his investigation of the threats against the receptionist and calls to Senator Kyl's office. He found appellant living in a car on a dirt lot. Appellant talked "almost nonstop, . . . [jumped] from one topic to another topic" and would not answer questions, although he ultimately admitted calling

the offices of Senator McCain and the Governor. It was because of the threats that Cross believed an application for an evaluation was warranted.

¶13 Section 36-501(5), A.R.S., provides as follows:

> "Danger to others" means that the judgment of a person who has a mental disorder is so impaired that the person is unable to understand the person's need for treatment and as a result of the person's mental disorder the person's continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm.

Thus, based on its plain language, the statute reflects the legislature's intent to permit civil commitment when there is a reasonable risk that the person will harm another, albeit a risk that such harm is imminent. *See In re Pima Cnty. Mental Health No. MH 1717-1-85*, 149 Ariz. 594, 596, 721 P.2d 142, 144 (App. 1986); *see also In re Leon G.*, 204 Ariz. 15, ¶ 27, 59 P.3d 779, 787 (2002) (finding phrase "reasonably be expected" in general civil commitment statute to be a less stringent standard than that under Sexually Violent Persons Act, which uses term "likely" to reoffend, meaning "highly probable"). There was sufficient evidence before the trial court to support its conclusion that appellant was "as a result of a mental disorder, a danger to others, as well as persistently and acutely disabled."

¶14 The evidence unequivocally established appellant was psychotic, paranoid, delusional, and had threatened to shoot and kill someone. That appellant denied having threatened the receptionist and offered an explanation for what he had said to her does not negate the court's findings as appellant suggests. The court was free to reject appellant's denials and explanations, which it presumably did. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002) (trial court in best

position to observe witnesses, judge their credibility, weigh evidence, and make findings of fact).

¶15 We disagree with appellant's suggestion that Dr. Sanderlin's testimony about his dangerousness was too equivocal to support the court's ruling. Appellant makes much of her initial response of, "I'm not sure" when asked whether she thought he was dangerous. Appellant has taken that response out of context. Dr. Sanderlin seemed to be trying to answer the question whether she believed appellant would actually follow through with threats and act on them. But her testimony supported the ultimate conclusion she reached in her report affidavit that she believed appellant was at the very least potentially dangerous to others because he had, after all, made real, violent threats. This, coupled with the fact that he was paranoid, delusional and reportedly threatening to others on the ward, contributed to her conclusion.

¶16 Dr. Stoker's testimony about appellant's dangerousness was more direct. When asked whether appellant was likely to cause serious harm to others if he did not receive treatment, Dr. Stoker stated he thought there was "a risk." Like Dr. Sanderlin, he related this risk to appellant's schizoaffective disorder and the resulting paranoia, delusions, and fragmented thought process. And also like Dr. Sanderlin, Dr. Stoker concluded in his report that without treatment, appellant "will be a danger to self, others," and is persistently and acutely disabled.

¶17 Ultimately, it was for the trial court to consider and weigh all of the evidence to determine whether appellant's "continued behavior [could] reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm." § 36-501(5). The substantial evidence before the court in that regard included the threats, the medical experts' testimony and reports about the nature of appellant's mental

condition and their assessment of the serious risk of danger appellant posed to others. To the extent appellant is asking us to reweigh the evidence, we will not. *See In re MH 2007-001236*, 220 Ariz. 160, n. 17, 204 P.3d at 429 n. 17 (even if physicians disagree with each other as to basis for treatment, trial court may find evidence clear and convincing evidence patient needs court-ordered treatment).

¶18 Because there was sufficient evidence to support the court's order we affirm.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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

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