IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 02-25-2010
PHILIP G. URRY, CLERK
BY: DN

IN RE MH 2009-001172	1 CA-MH 09-0045 DEPARTMENT D **MEMORANDUM DECISION** Not for Publication – (Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court of Maricopa County

Cause No. MH 2009-001172

The Honorable Patricia Arnold, Judge Pro Tempore

AFFIRMED

Andrew P. Thomas, Maricopa County Attorney — Phoenix
By Ann C. Longo, Deputy County Attorney
and Roberto Pulver, Deputy County Attorney
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 Appellant appeals the trial court's order committing her to involuntary mental health treatment. For the following reasons, we affirm.

¶2 A staff member at an urgent psychiatric care facility completed an application for involuntary evaluation and an application for emergency admission for evaluation of appellant, who was then an outpatient. The staff member alleged that appellant was a danger to herself and a danger to others. Appellant allegedly kicked and scratched staff members, threw objects at them, and spit on them. In addition, the staff member accused appellant of banging her head against a wall, kicking a wall, refusing to go to the hospital, and threatening to "bash staffs [sic] face."

¶3 After evaluations by two doctors who signed petitions for court-ordered evaluation and treatment, the trial court issued a detention order for evaluation and notice, stating that appellant appeared to be "mentally disordered," was not willing to undergo voluntary evaluation, and was likely a danger to herself, a danger to others, persistently or acutely disabled, or gravely disabled. The trial court then issued a detention order for treatment and notice.

¶4 Following a hearing, the trial court found, by clear and convincing evidence, that appellant had a mental disorder, making her a danger to herself, a danger to others, persistently

or acutely disabled, and gravely disabled, and that appellant was in need of psychiatric treatment and unwilling or unable to accept voluntary treatment. The trial court ordered 365 days of mandatory treatment, with a minimum of twenty-five days' inpatient detention. Appellant appealed.

¶5 Appellant argues on appeal that the trial court erred by ordering appellant into involuntary treatment because only one of the two required evaluating doctors completed his examination of appellant. Appellant admittedly did not raise this issue below and, in fact, stipulated to the admission of the affidavit of the doctor in question. According to appellee, because appellant's counsel stipulated to the admission of the affidavit, counsel must have had the opportunity to review this affidavit and found it to be legally sufficient. We agree with appellee that appellant has waived this issue on appeal by failing to raise it below. *See Appeal in Pima County Mental Health Serv. Action No. MH-1140-6-93*, 176 Ariz. 565, 568, 863 P.2d 284, 287 (App. 1993) (citations omitted) (arguments not raised below are waived and court can decline to consider them); *In re MH 2007-001264*, 218 Ariz. 538, 540, ¶ 16, 189 P.3d 1111, 1113 (App. 2008) (citation omitted) (arguments not raised below are waived on appeal). Therefore, we decline to consider this issue on appeal.

¶6 Appellant next argues that her mental retardation precluded findings that she was a danger to herself, a danger to others, persistently and acutely disabled, and gravely disabled. We will affirm the trial court's decision to order involuntary treatment if it is supported by substantial evidence, *MH-1140-6-93*, 176 Ariz. at 566, 863 P.2d at 285, including expert medical opinions expressed to a reasonable degree of certainty or probability to prove the elements of involuntary treatment, *In re MH 2007-001236*, 220 Ariz. 160, 169, ¶ 29, 204 P.3d 418, 427 (App. 2008).

¶7 Appellant argued below that, because she was mentally retarded, she could not legally be found to be a danger to herself, a danger to others, persistently or acutely disabled, or gravely disabled because these require that her behavior be the "product" of a mental disorder. *See* Ariz. Rev. Stat. (A.R.S.) § 36-501(5), (6), (16), (33) (2009) (defining danger to others, danger to self, gravely disabled, and persistently or acutely disabled). A "mental disorder" is "a substantial disorder of the person's emotional processes, thought, cognition or memory" and is distinguished from mental retardation "unless, in addition . . ., the person has a mental disorder." A.R.S. § 36-501(26)(a).

¶8 According to appellant, the medical expert opinions were not expressed to a reasonable degree of medical certainty.

One doctor diagnosed appellant as suffering from impulse control disorder, an unspecified mood disorder, and mild mental retardation. He found that, as a result, appellant was a danger to herself, a danger to others, persistently or acutely disabled, and gravely disabled. Another doctor diagnosed appellant as having obsessive compulsive disorder and moderate mental retardation. He concluded that, as a result of these disorders, appellant was a danger to herself, a danger to others, persistently or acutely disabled, and gravely disabled. Therefore, two doctors diagnosed appellant as being mentally retarded and having a mental disorder that caused her to be a danger to herself, a danger to others, persistently or acutely disabled, and gravely disabled.

¶9 The doctors' affidavits described appellant's history, and one testified that appellant's "impaired insight and judgment" could not be solely attributable to her mental retardation. This doctor also opined that "mentally retarded people often have behavioral problems as well as issues with their mood and thought [sic]" and that they often have "co-existing . . . morbid problems." Therefore, mental retardation and mental disorders can co-exist. The other doctor testified that the symptoms of impulse control can manifest independently from those of mental retardation.

¶10 The testimony of staff members who worked at the group home where appellant lived also described her history of assaulting others, harming herself, and inability to take care of herself. We find that the medical expert testimony and affidavits as well as the testimony of other witnesses about appellant's behavior constituted substantial evidence in support of the trial court's finding that, as a result of a medical disorder, appellant was a danger to herself, a danger to others, persistently or acutely disabled, and gravely disabled.

¶11 For the foregoing reasons, we affirm.

___/s/_____
JON W. THOMPSON, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
DIANE M. JOHNSEN, Judge