

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 06-15-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE MH 2009-001142) 1 CA-MH 09-0066
)
) DEPARTMENT E
)
) **MEMORANDUM DECISION**
) (Not for Publication
) - Rule 28, Arizona
) Rules of Civil
) Appellate Procedure)
)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2009-001142

The Honorable Patricia Arnold, Judge Pro Tempore

AFFIRMED

Richard M. Romley, Acting Maricopa County Attorney Phoenix
By Anne C. Longo, Deputy County Attorney
and Bruce P. White, Deputy County Attorney
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 After conducting an evidentiary hearing, the superior court found by clear and convincing evidence appellant was, as a result of a mental disorder, a danger to self, persistently or

acutely disabled, in need of psychiatric treatment, and unwilling or unable to accept voluntary treatment. Accordingly, the court ordered appellant to undergo a combination of inpatient and outpatient treatment not to exceed 365 days ("treatment order"). In entering the treatment order, counsel for appellant and petitioner expressly stipulated to admit the two evaluating physicians' affidavits and the 72-hour medication affidavit in lieu of in-person testimony. When specifically asked by the superior court whether this was the agreement, appellant's counsel said it was. The court, thus, did not engage in a colloquy with appellant to determine whether she knowingly, voluntarily, and intelligently waived the physicians' in-person testimony.

¶2 On appeal, appellant asks us to vacate the treatment order, asserting the court was required to engage in a colloquy with her personally to decide whether she had knowingly, voluntarily, and intelligently waived her right to have the evaluating physicians testify in person. She asserts the court's failure to do so violated statutory requirements and deprived her of due process. We disagree for the reasons stated in *In re MH 2009-001264*, ___ Ariz. ___, ___, ¶¶ 7-11, 229 P.3d 1012, 1014-15 (App. 2010). In that case, the court rejected

this argument on facts virtually identical to those presented here.

¶3 Appellant secondarily contends petitioner failed to satisfactorily establish the evaluating physicians' credentials. Not only did appellant fail to object on this basis in the superior court and thus has waived this argument, see *Estate of Reinen v. N. Ariz. Orthopedics, Ltd.*, 198 Ariz. 283, 286, ¶ 9, 9 P.3d 314, 317 (2000), but the record includes sufficient proof of the physicians' credentials. Each physician's affidavit was signed, dated, "subscribed and sworn" before a notary public and stated the "affiant is a physician and is experienced in psychiatric matters." Each affidavit also identified the examining physician as an "M.D."¹

¶4 In *In re MH 2009-001264*, the appellant raised virtually the same argument regarding the physicians' qualifications. ___ Ariz. at ___, ¶¶ 12-15, 229 P.3d at 1015-16. We rejected that argument there and reject it here.

¹One of the examining physicians is a psychiatric resident. The record contains a "resident supervision affidavit" executed by the resident's supervising physician in accordance with the requirements of Arizona Revised Statutes section 36-501(12)(a) (2009).

CONCLUSION

¶15 For the foregoing reasons, we affirm the treatment order.

/s/

PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

PHILIP HALL, Judge