DIVISION ONE
FILED: 05-25-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

	1 CA-MH 09-0079
IN RE MH2009-002064	DEPARTMENT A
	MEMORANDUM DECISION
	(Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. MH2009-002064

The Honorable Michael D. Hintze, Judge Pro Tempore

AFFIRMED

Richard M. Romley, Maricopa County Attorney — Phoenix
by Anne C. Longo
Bruce P. White
Deputy County Attorneys, Civil Division
Attorneys for Appellee

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

P O R T L E Y, Judge

¶1 R.J. challenges the order involuntarily committing him for treatment. Specifically, he argues that the court erred in denying his request to represent himself at the involuntary commitment hearing. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Dr. Michael Hughes filed a petition for court-ordered treatment on September 2, 2009, and alleged that R.J. was "[p]ersistently or acutely disabled" as a result of a mental disorder. He sought an order for combined inpatient and outpatient treatment for R.J. pursuant to Arizona Revised Statutes ("A.R.S.") section 36-540(A)(2) (Supp. 2009)

¶3 At the start of the treatment hearing, R.J. requested to represent himself. The trial court summarily denied the request, concluding that R.J. was not permitted to do so. R.J. objected and argued that he had "never had any mental health problems." The court noted that it had taken judicial notice of three prior mental health findings, one in 2007, and two in 2008, and again denied the request, stating that court-appointed counsel was "very able to assist [him]."

¶4 At the conclusion of the hearing, the court found that R.J. was persistently or acutely disabled as a result of a mental disorder, and ordered him to undergo "[t]reatment in a

program of combined inpatient and outpatient treatment" for a period of no longer than 365 days.

¶5 R.J. appeals, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) (2003) and 36-546.01 (2009).

DISCUSSION

¶6 R.J. argues that he has a right to waive counsel, and that the trial court violated his due process rights by denying his request to represent himself. We review the ruling denying waiver of the right to counsel for an abuse of discretion. *See State v. Harding*, 137 Ariz. 278, 286, 670 P.2d 383, 391 (1983).

¶7 A person facing an involuntary commitment proceeding has a right to counsel in Arizona. *See* A.R.S. § 36-528(D) (2009); *In re Jesse M.*, 217 Ariz. 74, 76-77, ¶¶ 11-14, 170 P.3d 683, 685-86 (App. 2007). We have previously held, however, that an individual may waive the right to counsel in an involuntary commitment hearing if the waiver is done knowingly, intelligently, and voluntarily.[1] *See Jesse M.*, 217 Ariz. at 77-79, ¶¶ 16, 18, 24, 170 P.3d at 686-88 (stating that Arizona

[1] R.J. contends that, in *Jesse M.*, we held that an alleged mentally ill person "has the right to waive counsel at an involuntary commitment proceeding." Although we concluded that an alleged mentally-ill person *may* waive the right to counsel, we did not address whether there was a constitutional or statutory right to self-representation in this context. *See generally Jesse M.*, 217 Ariz. 74, 170 P.3d 683. Because we conclude that the trial court did not abuse its discretion in denying R.J.'s request to waive his right to counsel, we need not address whether there is a constitutional or statutory right to self-representation in mental health cases.

cases "stand for the proposition that a person with a mental health diagnosis can waive his right to counsel so long as he is competent to make the decision and the record supports the trial court's decision"); *see also State v. Evans*, 125 Ariz. 401, 403, 610 P.2d 35, 37 (1980) (holding that a mental health diagnosis "does not mean that [a defendant] is unable to make competent choices"); *Lanett v. State*, 750 S.W.2d 302, 305 (Tex. App. 1988) (holding that a "court should not summarily deny [a request to waive right to counsel] simply because of the nature of the proceedings").

¶8 In *Jesse M.*, we set forth the procedure a trial court should follow when considering a request to waive the right to counsel. 217 Ariz. at 80, ¶ 30, 170 P.3d at 689. Among other steps, the court should "learn whether the patient has any education, skill or training that may be important to deciding whether he has the competence to make the decision," and "determine whether the patient has some rudimentary understanding of the proceedings and procedures to show he understands the right he is waiving." *Id.* After the on-the-record discussion and inquiry are complete, the court "should make specific factual findings supporting the grant or denial of the waiver." *Id.*

¶9 Here, R.J. argues, and the State agrees, that the trial court failed to fully comply with the procedures outlined

in *Jesse M.* R.J. argues that we should consequently overturn his commitment. The State, on the other hand, argues that "the denial of [R.J.'s] request for self-representation was [nevertheless] reasonable, and supported by the record."

¶10 In *Jesse M.*, we affirmed a denial of a request to waive the right to counsel despite the fact that the trial court did not follow the procedures we outlined. 217 Ariz. at 80, ¶ 31, 170 P.3d at 689. We concluded, despite the failures, that the record "present[ed] serious concerns about [the patient's] capability to make a knowing waiver." *Id.* at 81, ¶¶ 34-35, 170 P.3d at 690. Similarly, in *Lanett*, the Texas Court of Appeals reviewed whether a trial court erred when it denied a patient's request to represent herself after concluding that it would be "unwise" for her to do so. 750 S.W.2d at 304. Although the trial court did not expressly find that the patient was incapable of competently waiving her right to counsel, the appellate court nevertheless concluded that, from the record, "the court *could have found* that [she] was not capable of knowingly and intelligently waiving her right of court-appointed counsel." *Id.* at 305 (emphasis added). The appellate court recognized that the trial court had taken judicial notice of three certificates of medical examination on file, that all three examining psychiatrists had concluded that the patient was

mentally ill, and that the trial court had the opportunity to observe her behavior in court multiple times. *Id.* at 304-05.

¶11 Here, the State argues that the record supports the conclusion that R.J. was not competent to waive his right to counsel regardless of the trial court's failure to follow *Jesse M*. We agree.

¶12 As in *Jesse M.* and *Lanett*, the trial court here had sufficient evidence to conclude that R.J. could not knowingly and intelligently waive his right to counsel. The court expressly noted that it had taken judicial notice of three prior mental health findings from cases involving R.J. in 2007 and 2008. Additionally, the court had affidavits provided with the petition for court-ordered evaluation and the petition for court-ordered treatment. Those filings indicated that R.J. was homeless, had a history of psychosis, was considered severely mentally ill by Magellan[2] in an open case, was "chronically non-compliant," and had multiple arrests due to behavior related to his delusions. Two medical doctors concluded that R.J.'s insight and judgment were both impaired because of mental illness. Additionally, the court was able to witness R.J.'s demeanor and hear his disjointed objection to the court's preliminary ruling.

[2] Magellan Health Services of Arizona, Inc., is the Regional Behavioral Health Authority of Maricopa County, and manages the publicly funded behavioral health care delivery system.

¶13 Based on the evidence, the trial court could have concluded that R.J. was not competent to waive his right to counsel, and it was not an abuse of discretion to deny his request.

CONCLUSION

¶14 Based on the foregoing, we affirm.

/s/
_____
MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/
_____
LAWRENCE F. WINTHROP, Judge

/s/
_____
MARGARET H. DOWNIE, Judge