DIVISION ONE
FILED: 01/25/2011
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

	) 1 CA-MH 10-0049
	)
	) DEPARTMENT D
	)
IN THE MATTER OF FRED T.	) **MEMORANDUM DECISION**
	) (Not for Publication
	) - Rule 28, Arizona
	) Rules of Civil
	) Appellate Procedure)
	)

Appeal from the Superior Court in Yavapai County

Cause No. P1300MH20080069

The Honorable Tina R. Ainley, Judge

AFFIRMED

Sheila Polk, Yavapai County Attorney Prescott
By Jack H. Fields, Deputy County Attorney
Attorneys for Appellee

John R. Thornton, Jr., Yavapai County Public Defender Prescott
Attorney 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, 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").

¶2 On appeal, appellant asks us to vacate the treatment order.[1] Although phrased as a legal issue of statutory construction,[2] appellant in fact challenges the sufficiency of the evidence for the first requirement of "persistently or acutely disabled,"[3] arguing the court found he suffered a risk of harm "based only on the potential that third parties might attack Appellant for expressing his extreme [religious] beliefs." We disagree; the evidence meets the requirement as we have interpreted it in Arizona. *See In re Maricopa Cnty. Cause*

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[1]We uphold treatment orders if supported by substantial evidence and set aside findings of fact only if "clearly erroneous or unsupported by any credible evidence." *In re Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995).

[2]Appellant contends the court "misinterpreted the [Arizona Revised Statutes ("A.R.S.") section] 36-501(33) [(Supp. 2010)] definition of Persistently or Acutely disabled, to include as the necessary element of harm, that other people might do violence against Appellant simply for expressing his extreme religious beliefs." Based on our review of the record, appellant's argument misconstrues the basis for the court's treatment order.

[3]Section (33)(a) requires the person to have a mental disorder that "[i]f not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality." A.R.S. § 36-501(33)(a).

No. MH-90-00566, 173 Ariz. 177, 183, 840 P.2d 1042, 1048 (App. 1992).

¶3 At the hearing, a nurse from the treatment center where appellant had been treated and a police officer testified appellant's verbal threats ranged from asserting Jesus would bring justice to America by violently killing people to telling nurses he (personally) would get their license plate numbers, kill them, and then go after their families. In addition, two licensed physicians testified at the hearing regarding appellant's mental illness and risk of harm. One physician, Dr. C., testified appellant was "verbally aggressive" and was

> compelled to say things, words, to people. However, in public, if he were to say some of the disparaging and insult[ing] comments that he has made to people, which includes the employees and the fellow patients -- if he were to say . . . things in public to other people, he would be at high risk to be harmed by another person, either beaten up or shot.

Dr. C. further testified he was "concerned that a person in the street would take advantage of harming [appellant] as well." Relying on this testimony, the court found, although not a "danger to others," appellant nevertheless met the elements of "persistently or acutely disabled" -- the "risk of harm is based on the statements made and the risk of reactions of other people" and "he is putting himself at harm by the statements

he's made; and that those statements, as Dr. [C] said, are pressured and that he is having difficulty restraining himself from making statements."

¶4 Thus, the record demonstrates appellant's threats went far beyond merely stating his religious beliefs. Because the extreme and violent nature of appellant's threats could reasonably trigger his incarceration, his injury in a physical confrontation or altercation, or his mental or emotional harm, the court was presented with sufficient evidence that if appellant's mental disorder was left untreated, it would cause a "substantial probability" of appellant suffering "severe and abnormal mental, emotional or physical harm." A.R.S. § 36-501(33)(a). Accordingly, contrary to appellant's assertions, we hold the court's findings were not clearly erroneous or unsupported by any credible evidence.

¶5 Appellant also argues the court's treatment order violated his rights under the Establishment Clause because it did not exempt him from medication and treatment that would violate his religious beliefs. Although appellant did not waive this argument,[4] the record does not contain sufficient evidence

[4]The State argues appellant waived this argument. We disagree. Although defense counsel never objected on Establishment Clause grounds at the hearing, the record demonstrates counsel indicated appellant's resistance to take medication was founded on his religious beliefs.

he objected to "modern medication" and treatment *because of his religious beliefs*. Rather, one of the evaluating physicians testified appellant does not have "the insight to see that he needs [the medication] *because of his impairment from his mental illness*." (Emphasis added.) Dr. C. likewise testified appellant is "not in charge of his life because of his mental illness" and appellant's "religious beliefs" result from a "combination" of his mental illness and spirituality.

¶6 Although the court did not make a specific finding concerning appellant's reasons for objecting to certain medication and treatment, the record reflects the court's implicit rejection of his argument that he objected due to his religious beliefs.[5] Further, the court requested the medical director of the treatment center modify the treatment plan to accommodate appellant's concerns regarding natural medication. Thus, we hold the treatment order did not violate appellant's rights under the Establishment Clause.

[5]"Implied in every judgment, in addition to express findings made by the court, is any additional finding that is necessary to sustain the judgment, if reasonably supported by the evidence, and not in conflict with the express findings." *Coronado Co. v. Jacome's Dep't Store, Inc.*, 129 Ariz. 137, 139, 629 P.2d 553, 555 (App. 1981).

CONCLUSION

¶7 For the foregoing reasons, we affirm the superior court's treatment order.

/s/
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PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/
_____
JOHN C. GEMMILL, Judge

/s/
_____
PATRICIA A. OROZCO, Judge