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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/01/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE MH2010-002595) No. 1 CA-MH 11-0018
) No. 1 CA-MH 11-0020
) (Consolidated)
)
) DEPARTMENT E
)
) **MEMORANDUM DECISION**
)
) (Not for Publication -
) Rule 111, Rules of the
) Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2010-002595
Cause No. MH 2010-001268

The Honorable Steven K. Holding, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joel Rudd, Assistant Attorney General
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Attorneys for Appellee

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By Cynthia Dawn Beck, Deputy Legal Defender
Attorneys for Appellant

T I M M E R, Judge

¶1 J.M. appeals the trial court's rulings dismissing his "appeal for judicial review" of a treatment order and entering a new order for involuntary treatment. For the reasons that follow, we affirm.

BACKGROUND

¶2 In April 1998, J.M. was admitted to the Arizona State Hospital ("ASH") and placed in the restoration-to-competency program while he waited to stand trial on criminal charges for stabbing a man in the eye. On December 2, 1999, J.M. pleaded guilty except insane to a charge of attempted second-degree murder. The court imposed a ten-and-one-half-year term of commitment to the care of the Psychiatric Security Review Board ("Board") at ASH. During this commitment, J.M. accosted a nurse; the court convicted him of kidnapping and assault and sentenced him to seven and one-half years' imprisonment. Upon completing his sentence in July 2008, J.M. was returned to ASH to complete his original commitment term, which was set to expire June 2, 2010.

¶3 In May 2010, ASH filed a petition for court-ordered treatment pursuant to Arizona Revised Statutes ("A.R.S.") section 36-533 (2009) in case number MH2010-001268. After holding an evidentiary hearing on June 2, the court found that J.M. suffered from a mental disorder and was in need of treatment. The court ordered J.M. to undergo

inpatient/outpatient treatment not to exceed 365 days with a maximum of 180 days' inpatient treatment care. On September 23, J.M. filed a pro per request for judicial review.

¶14 On November 22, ASH filed a second petition for court-ordered treatment in case number MH2010-002595 before J.M.'s term of inpatient treatment under the June 2 order expired. On December 8, the court held a hearing on both J.M.'s request for judicial review of the June 2 order in MH2010-001268 and ASH's new petition in MH2010-002595. At the conclusion, the court found by "clear and convincing evidence that J.M. has a resulting mental disorder, persistently or acutely disabled. . . . [J.M.] is unwilling to accept voluntary treatment," and thus granted ASH's petition and ordered inpatient/outpatient treatment not to exceed 365 days, with a maximum of 180 days' inpatient treatment. The court then denied J.M.'s request for review of the June 2 order as moot. The court entered its final order reflecting these rulings on December 8.

¶15 J.M., through his attorney, timely appealed the order in MH2010-002595 on January 6, 2011. On January 18, J.M. filed notices of appeal in propria persona in each case.

DISCUSSION

I. MH2010-001268

¶16 J.M. concedes he failed to timely appeal the challenged ruling in MH2010-001268, and we agree. The court

entered judgment denying the request for judicial review of the June 2, 2010 order on December 8, 2010; any notice of appeal was required to be filed by January 7, 2011. See ARCAP 9(a) (providing any timely appeal must be taken within 30 days of judgment entry). J.M. filed a notice of appeal on January 18, which was untimely. Because a timely notice of appeal is required for appellate jurisdiction, we lack jurisdiction to consider the appeal in MH2010-001268 and therefore dismiss it. *Edwards v. Young*, 107 Ariz. 283, 284, 486 P.2d 181, 182 (1971).

II. MH2010-002595

¶7 J.M. argues the trial court erred by entering the December 8 treatment order because the court lacked subject matter jurisdiction due to ASH's failure to comply with statutory pre-petition evaluation requirements. ASH counters it was not required to follow these requirements because it filed its petition pursuant to A.R.S. § 36-542(A)(2) (2009), which dispenses with evaluation requirements for persons already undergoing treatment pursuant to court order. Although J.M. failed to raise his argument to the trial court, challenges to a court's jurisdiction are "never waived and can be raised for the first time on appeal." *State v. Silva*, 222 Ariz. 457, 459, ¶ 9, 216 P.3d 1203, 1205 (App. 2009). We review a challenge to the trial court's jurisdiction de novo. *Samaritan Health Sys. v.*

Ariz. Health Care Cost Containment Sys. Admin., 198 Ariz. 533, 536, ¶ 13, 11 P.3d 1072, 1075 (App. 2000).

¶18 A court possesses subject matter jurisdiction to hear and rule on particular matters when granted authority to do so by the constitution or a statute. *State v. Maldonado*, 223 Ariz. 309, 311, ¶ 14, 223 P.3d 653, 655 (2010). Article 6, Section 14 of the Arizona Constitution vests the superior court with original jurisdiction over matters in which exclusive jurisdiction is not granted to another court. No other court is granted jurisdiction to consider and rule upon a petition for involuntary treatment. Once ASH filed its petition, the superior court acquired subject matter jurisdiction. See *In re MH 2008-000028*, 221 Ariz. 277, 279, ¶ 4, 282, ¶ 25, 211 P.3d 1261, 1263, 1266 (App. 2009) (holding superior court had subject matter jurisdiction to order treatment for appellant charged with crime and found incompetent to stand trial).

¶19 J.M. incorrectly contends that ASH's purported failure to satisfy statutory prerequisites to filing a petition deprived the court of subject matter jurisdiction. To support his contention, J.M. likens ASH's alleged statutory violation to a failure to exhaust administrative remedies as necessary to vest the court with jurisdiction. See *Estate of Bohn v. Waddell*, 174 Ariz. 239, 251, 848 P.2d 324, 336 (App. 1992) (holding a taxpayer must exhaust administrative remedies before the court

can exercise subject matter jurisdiction to hear refund case). The purpose of the exhaustion doctrine is to promote judicial efficiency and permit "an administrative agency to perform functions within its special competence—to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies." *Id.* at 246, 848 P.2d at 331 (citing *Parisi v. Davidson*, 405 U.S. 34, 37 (1972)). In this case, no administrative agency was tasked with considering ASH's petition or any pre-petition filings. The superior court was the only tribunal authorized to hear and rule on the petition. Although any statutory violation by ASH may have affected the merits of the petition, the court was vested with subject matter jurisdiction to make that determination.¹ See *In re Pinal Cnty. Mental Health No. MH-201000029*, 225 Ariz. 500, 501, ¶ 1, 240 P.3d 1262, 1263 (App. 2010) (concluding lack of strict statutory compliance voids a treatment order).

CONCLUSION

¶10 We lack jurisdiction to consider and decide J.M.'s appeal in MH2010-001268; we therefore dismiss that appeal. We hold the superior court properly exercised subject matter jurisdiction to hear and rule on ASH's petition in MH2010-

¹ J.M.'s argument that ASH was required to seek pre-petition evaluation is presented only in the context of the court's subject matter jurisdiction, and we are not asked to decide whether the court properly granted the petition in light of this alleged defect once it exercised jurisdiction.

002595. Consequently, we affirm the treatment order in that case.

/s/
Ann A. Scott Timmer, Judge

CONCURRING:

/s/
Jon W. Thompson, Presiding Judge

/s/
Daniel A. Barker, Judge