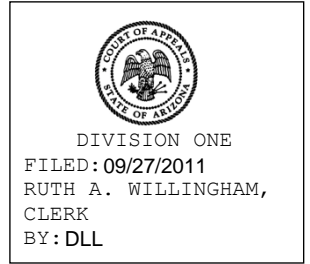


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



IN RE MH2009-003071 ) 1 CA-MH 11-0019  
)  
) DEPARTMENT D  
)  
) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. MH2009-003071

The Honorable Michael D. Hintze, Judge Pro Tempore

**AFFIRMED**

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Partners in Recovery, Inc. Gilbert  
by Steven Wiggs  
Attorneys for Appellee

Marty Lieberman, Maricopa County Legal Defender Phoenix  
by Colin F. Stearns, Deputy Legal Defender  
Attorneys for Appellant

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P O R T L E Y, Judge

¶1 S.P.<sup>1</sup> appeals the trial court's order granting the Application for Continued Treatment of his mental disorder. For the reasons that follow, we affirm the court's order.

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<sup>1</sup> Initials are used to protect the appellant's privacy.

## **FACTUAL AND PROCEDURAL BACKGROUND**

¶12 S.P. was ordered into involuntary treatment for up to one year on December 18, 2009, after a court determined he was persistently or acutely disabled and a danger to himself. A year later, Partners in Recovery ("PIR"), an outpatient treatment agency, filed an application seeking to continue S.P.'s court-ordered treatment pursuant to Arizona Revised Statutes ("A.R.S.") section 36-543(G) (2010). The application alleged that S.P. continued to be persistently or acutely disabled and in need of treatment. The trial court appointed a public defender to represent S.P. on December 10, 2010, and ordered the attorney meet with S.P. and file a report or request a hearing within three days, as required by A.R.S. § 36-543(G).

¶13 A hearing was requested and set for December 16, 2010. The hearing was continued one day later, in response to S.P.'s motion to dismiss, after the trial court learned that he did not receive timely notice of the hearing and counsel was unable to contact his client until December 14th. The hearing was conducted on December 17th and the court continued S.P.'s involuntary treatment. S.P. appealed, and we have jurisdiction pursuant to A.R.S. § 36-546.01 (2010).

## **DISCUSSION**

¶14 S.P. argues that the commitment order should be vacated because the probate court lacked subject matter

jurisdiction. Because jurisdiction is a question of law, we review it de novo. *Duwyenie v. Moran*, 220 Ariz. 501, 503, ¶ 7, 207 P.3d 754, 756 (App. 2009).

¶15 Subject matter jurisdiction cannot be waived and may be raised at any point in the proceeding, including on appeal. *State v. Foster*, 191 Ariz. 355, 357, ¶ 6, 955 P.2d 993, 995 (App. 1998); *Rojas v. Kimble*, 89 Ariz. 276, 279, 361 P.2d 403, 406 (1961). If the court does not have subject matter jurisdiction, any order issued is void and must be vacated. *Martin v. Martin*, 182 Ariz. 11, 14-15, 893 P.2d 11, 14-15 (App. 1994).

¶16 S.P. argues that the trial court lacked jurisdiction because the petition for continued treatment failed to allege that he “had been substantially noncompliant with treatment as required by A.R.S. § 36-543(E).” He contends that without the allegation the petition for continued treatment was defective. We disagree.

¶17 Section 36-543(E) provides that a persistently or acutely disabled patient who is undergoing court-ordered treatment must have an annual review if the medical director determines that the patient has been substantially noncompliant with treatment. The subsection does not require any specific language be recited in order to give a trial court jurisdiction to resolve a petition for continued treatment. Instead, if the

medical director determines that a patient cannot or should not be released from treatment at the end of the treatment period, a new petition must be filed. A.R.S. § 36-542(A)(2) (2010). The medical director must also forward the results of the annual review and a recommendation to the court. A.R.S. § 36-543(G).

¶18 Here, the medical director ordered an annual review and subsequently filed a petition, along with the review and his recommendation, prior to the expiration of the initial treatment period. Consequently, PIR complied with the statutory requirements and the trial court had jurisdiction to determine that the involuntary order needed to be continued pursuant to A.R.S. § 36-543(H).

#### CONCLUSION

¶19 Based on the foregoing, we affirm the continued treatment order.

/s/

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MAURICE PORTLEY, Judge

CONCURRING:

/s/

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JON W. THOMPSON, Presiding Judge

/s/

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JOHN C. GEMMILL, Judge