

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



DIVISION ONE
FILED: 09/29/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN RE MH 2009-003191) No. 1 CA-MH 11-0023
)
) DEPARTMENT B
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 28, Arizona Rules
) of Civil Appellate
) Procedure)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2009-003191

The Honorable Michael D. Hintze, Judge *Pro Tem*

AFFIRMED

People of Color Network, 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

D O W N I E, Judge

¶1 Appellant seeks reversal of an order continuing his involuntary mental health treatment. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In December 2009, Appellant believed he was "being slowly killed with exposure to radiation." He reported loss of vision and muscle tone, nerve damage, weight loss, and a general decline in health because "people spray[ed] him and his food" with "nerve agents, herbicides, industrial cleaners, pesticides." He claimed he was "extremely sensitive" to "radiation and the cell phones, radio, and remote control" because of the "particles . . . floating from these objects." Although medications had been prescribed to address his physical and mental condition, Appellant believed they were not helping and refused treatment.

¶3 Petitions for court-ordered evaluation and treatment were filed. Two evaluating physicians suggested Appellant suffered from paranoid schizophrenia and found him persistently or acutely disabled and in need of inpatient treatment. A hearing occurred in December 2009, at which the evaluating physicians, a crisis therapist, and Appellant testified. At the conclusion of the hearing, the court ordered Appellant to participate in combined inpatient/outpatient treatment for 365 days.

¶14 Appellant was initially compliant with treatment. But by October 2010, he was "substantially non-adherent," and his treatment team recommended continued court-ordered treatment. Appellant filed a Request for Judicial Review of Court Ordered Treatment. He was examined by a psychiatrist, who reported that Appellant continued having "poor insight into his mental illness" and paranoid thoughts. Appellant's "history of being aggressive [sic] when he is off medication" was also noted. The report further explained that Appellant refused to take oral antipsychotic medications, so he had been placed on injectable drugs. The court-appointed counsel, who consulted with Appellant and forwarded his request for release to the court, did not request a hearing. The court denied Appellant's request for release.

¶15 In December 2010, Appellant's outpatient treatment provider filed an application for continued treatment, alleging Appellant remained persistently or acutely disabled and in need of treatment, and recommending he not be released from court-ordered treatment. The Psychiatric Report for Annual Review ("annual report") stated that Appellant continued to believe a "wave of radiation from computer Pesticide [sic] are affecting his mind and his body" and refused to take medications because of "delusional" thoughts. The reporting psychiatrist also stated that Appellant's mental disorder affected his compliance

with medications and treatment and opined that Appellant would not continue medications and treatment if released from the court order. Appellant opposed the application, and a hearing was held.

¶16 Appellant was represented by counsel at the hearing, who stipulated to admission of the evaluating psychiatrist's report "in lieu of testimony." The clinical coordinator who worked directly with Appellant testified that Appellant refused medications and was placed on injectable drugs. The coordinator and case manager testified Appellant would likely discontinue medications if court-ordered treatment were not continued because he believed that the medications caused physical symptoms, and that he did not need them.

¶17 Appellant testified that "exposure to the chemicals" made him "vulnerable to low-level radiation," such as that "produced by man-made electronics." Appellant believed the anti-psychotic drugs were "toxic" to him and that the injections "activate[d]" his symptoms of fibromyalgia and "over sensitization of the central nervous system." Additionally, he described "daily attacks" from police officers, who he believed sprayed "nerve agents" on his body and food. Appellant testified that, without a court order, he would take "any meds that [would] benefit" him, but believed the side effects of the anti-psychotic drugs "greatly outweigh[ed] any benefit" he

received. Appellant urged the court to deny the application for continued treatment, explaining he was not refusing treatment but wanted "appropriate" treatment. The court ordered that treatment continue for 365 days.

¶18 Appellant timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 36-546.01.

DISCUSSION

¶19 Appellant contends the order for continued treatment must be vacated because insufficient evidence was presented to prove he remains persistently or acutely disabled. We will affirm a court's order for involuntary treatment if it is supported by substantial evidence. *In re MH 2008-001188*, 221 Ariz. 177, 179, ¶ 14, 211 P.3d 1161, 1163 (App. 2009). We view the facts in the light most favorable to sustaining the trial court's judgment. *Id.*

¶10 As a threshold matter, Appellant's reliance on A.R.S. § 36-539 and cases arising thereunder is misplaced. A.R.S. § 36-543 is the applicable statute. It dictates the procedures and elements of proof applicable to individuals who are already receiving court-ordered treatment. A party seeking renewal of a treatment order must prove all of the following by clear and convincing evidence:

1. The patient is one of the following:

- (a) A danger to self.
- (b) A danger to others.
- (c) Persistently or acutely disabled.
- (d) Gravely disabled.

2. The patient is in need of treatment.

3. The patient is either unwilling or unable to accept treatment voluntarily.

A.R.S. § 36-543(H).

¶11 The application for continued treatment alleged that Appellant "continues to be persistently or acutely disabled." A person is "persistently or acutely disabled" if he has a "severe mental disorder" that:

(a) If not treated has a substantial probability of causing the person to . . . suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.

(b) Substantially impairs the person's capacity to make an informed decision regarding treatment

(c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

A.R.S. § 36-501(33).

¶12 The parties stipulated to admission of the annual report, which at least minimally complies with statutory requirements.¹ The report was completed by a licensed

¹ The annual report is a standardized form that includes statements corresponding to the statutory elements, with "yes" and "no" check boxes and space to add "facts that support this conclusion." In several instances, no supporting information

psychiatrist, A.R.S. § 36-543(E), who opined that Appellant continues to suffer from "Delusional disorder/Paranoid Schizophrenia" and, as a result, is persistently or acutely disabled. The report also stated that voluntary treatment was not appropriate because Appellant has "poor insight about his mental illness," refused oral medications, and would likely not take prescribed medications or comply with other treatment for his mental disability if released from the court order.

¶13 At the conclusion of the hearing, the superior court ruled that Appellant remains persistently or acutely disabled as a result of a mental disorder, that he is in need of continued treatment, and that he is either unwilling or unable to accept voluntary treatment. The record supports these determinations.

¶14 It was proven that Appellant suffers from a severe mental disorder that, if not treated, would cause him to "suffer severe and abnormal mental . . . harm that significantly impairs judgment, reason, behavior or capacity to recognize reality." A.R.S. § 36-501(33)(a). Appellant has been diagnosed with paranoid schizophrenia, which causes him to believe police officers are spraying him and his food with "nerve agents" and that anti-psychotic medications are toxic.

was provided. Where supporting information was provided, it was relatively brief. Nevertheless, the information required by A.R.S. § 36-543(F) was present.

¶15 The record also demonstrates that Appellant's "capacity to make an informed decision regarding treatment," A.R.S. § 36-501(33)(b), is substantially impaired by his mental illness. Appellant believes his anti-psychotic medications are toxic and increase his susceptibility to radiation and nerve agents. Appellant testified the medications are not helpful and, if released from court-ordered treatment, he would discontinue any medications that did not benefit him. Yet Appellant improved when taking prescribed medication in injectable form.

¶16 Finally, the record demonstrates Appellant has a "reasonable prospect of being treatable" through outpatient care. He was receiving outpatient treatment before the hearing and, while on injectable medications, his symptoms improved.

CONCLUSION

¶17 For the reasons stated, we affirm the continued treatment order.

/s/

MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/

PETER B. SWANN, Judge

/s/

DONN KESSLER, Judge