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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 09/13/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

IN RE MH 2011-000086 ) 1 CA-MH 11-0035  
)  
) DEPARTMENT C  
)  
) **MEMORANDUM DECISION**  
) (Not for Publication  
) - Rule 111, Rules of  
) the Arizona Supreme  
) Court)  
)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2011-000086

The Honorable Veronica Brame, Judge Pro Tempore

**AFFIRMED**

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Bruce P. White, Deputy County Attorney  
Civil Division  
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Phoenix

**H A L L**, Judge

¶1 Appellant challenges his involuntary treatment order.

For the reasons set forth below, we affirm.



## **FACTS AND PROCEDURAL HISTORY**

¶2 The facts relevant to the issue on appeal are as follows. On January 11, 2011, Sarah Almendarez, Appellant's case manager, petitioned the superior court seeking an involuntary inpatient mental health evaluation of Appellant. As set forth in the petition, Almendarez averred that there was reasonable cause to believe that Appellant has a mental disorder and is persistently or acutely disabled. Almendarez explained that Appellant is "on medication monitoring" and he frequently refuses his medication. In addition, Appellant has poor hygiene and extremely unsanitary living conditions. Appellant has also been observed begging for food and cigarettes. Almendarez further explained that Appellant was previously diagnosed as schizophrenic and frequently displays negative symptoms of his illness such as paranoid thought, auditory hallucinations, and talking to himself. The superior court issued a detention order for Appellant's evaluation.

¶3 On January 19, 2011, Carol Olson, M.D., petitioned the superior court seeking court-ordered treatment for Appellant. As set forth in the petition, Dr. Olson averred that there was reasonable cause to believe that Appellant has a mental disorder and is persistently and acutely disabled. In her attached affidavit, Dr. Olson explained that she interviewed Appellant



and he claimed to take his medication as prescribed and shower two or three times daily. Appellant did acknowledge, however, that he allows trash and debris to accumulate in his apartment and admitted asking neighbors for food. Appellant also acknowledged that he has had multiple prior psychiatric hospitalizations, but claimed he did not understand "why he has ever received psychiatric treatment." Appellant stated that he does not believe he actually has bipolar disorder or schizophrenia, as diagnosed, and asserted that he is "even cooler" when he does not take his prescribed medications. When asked whether he experiences hallucinations, Appellant hesitated, but then denied having any psychiatric symptoms "in automatic fashion." Dr. Olson also set forth her review of the "nursing notes" recorded during Appellant's court-ordered evaluation and explained that Appellant has "frequently been observed responding to internal stimuli," such as talking to unseen persons. Dr. Olson opined that Appellant's insight and judgment regarding his illness are extremely poor and therefore he is unable to understand his need to comply with a treatment regimen.

¶4 Dr. Olson's petition for court-ordered treatment also contained an affidavit from Melissa Ramirez, M.D. Dr. Ramirez averred that there was reasonable cause to believe that



Appellant has a mental disorder and is persistently and acutely disabled. During her interview with Appellant, he again claimed that he has been fully compliant with taking his medication. Appellant also denied having any hallucinations and asserted that he showers "three to four" times per day and cleans his apartment "twice a week." Appellant did acknowledge, however, asking neighbors for food. Dr. Ramirez observed that Appellant has a flat affect and a dysphoric mood. Based on her interview with Appellant and her review of his medical history, Dr. Ramirez opined that Appellant has "no insight into his mental illness and his judgment is impaired."

¶15 On January 25, 2011, the superior court held a hearing on the petition for court-ordered treatment. At the hearing, the parties stipulated to the admissibility of the evaluating physicians' affidavits in lieu of their in-court testimony. After the petitioner's presentation of evidence and Appellant's testimony, the superior court found, by clear and convincing evidence, that Appellant is suffering from a mental disorder and, as a result, is persistently or acutely disabled, and "in need of psychiatric treatment and is unwilling or unable to accept voluntary treatment."



¶16 Appellant timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-2101(B) (2003) and 36-546.01 (2009).

#### DISCUSSION

¶17 As his sole issue on appeal, Appellant contends that the petitioner presented insufficient evidence to support the superior court's finding that he is persistently and acutely disabled. Specifically, Appellant asserts that Dr. Olson's affidavit is statutorily deficient. We disagree.

¶18 We uphold an order for treatment unless it is "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). We review the record to determine whether the order is supported by substantial evidence. *Id.* at 446, 897 P.2d at 748.

¶19 A civil commitment constitutes a significant deprivation of liberty and therefore involuntary treatment proceedings must strictly meet the statutory requirements. *In re Maricopa County Superior Court No. MH 2001-001139*, 203 Ariz. 351, 353, ¶ 8, 54 P.3d 380, 382 (App. 2002). A patient is persistently or acutely disabled if the patient has a severe mental disorder that: (1) if left untreated, "has a substantial probability of causing the [patient] 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"*; (2) substantially impairs the patient's ability to make decisions and understand the advantages and disadvantages of treatment; and (3) has a reasonable prospect of being treatable. A.R.S. § 36-501(33) (2009) (emphasis added). The evidence to support a finding of persistent or acute disability must include the testimony of two physicians who examined the patient, which may be satisfied by stipulating to the admission of the evaluating physicians' affidavits. A.R.S. § 36-539(B). "[The physicians] shall also testify as to their opinions concerning whether the patient is, as a result of a mental disorder, . . . persistently or acutely disabled[.] . . . Such testimony shall state specifically the nature and extent of . . . the persistent or acute disability[.]" A.R.S. § 36-539(B).

¶10 Appellant asserts for the first time that Dr. Olson's affidavit failed to allege facts that would support a finding that his illness, if left untreated, would cause him to suffer "severe and abnormal mental, emotional or physical harm[.]" A.R.S. § 36-501(33)(a). Because Appellant failed to raise this



issue in the superior court, it is waived.<sup>1</sup> See *In re MH 2008-002393*, 223 Ariz. 240, 244, ¶ 17, 221 P.3d 1054, 1058 (App. 2009). Nonetheless, we conclude Dr. Olson's affidavit is statutorily sufficient.

¶11 Appellant correctly notes that Dr. Olson stated "[t]he patient reportedly has had very poor hygiene, and has not been maintaining his apartment" in the portion of the affidavit asking her to set forth the basis for her conclusion that Appellant is persistently or acutely disabled. As Appellant argues, these facts, in isolation, may be insufficient to support a finding that Appellant, if left untreated, would "suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality." Dr. Olson's affidavit viewed in its entirety, however, satisfies the statutory standard. Throughout her eight-page affidavit, Dr. Olson explains that Appellant fails to recognize that he suffers from a mental illness, despite his formal diagnoses and previous hospitalizations, and he perceives that he is "cooler" when he

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<sup>1</sup> Contrary to the Appellee's claim, Appellant's stipulation to the admissibility of the doctors' affidavits did not include a stipulation to their statutory sufficiency. See *State v. Kuhs*, 223 Ariz. 376, 380, ¶ 16, 224 P.3d 192, 196 (2010) (holding that the parties' stipulation to a doctor's report in a Rule 11 matter did not constitute a stipulation to the issue of the defendant's competency).



does not take his prescribed medications. In addition, Dr. Olson notes that during Appellant's court-ordered evaluation he frequently responded to "internal stimuli," such as talking to unseen persons. Moreover, Appellant's inability to care for himself and his apartment in a hygienic manner supports Dr. Olson's conclusion that he suffers from a mental illness that causes him mental, emotional, and physical harm that significantly impairs his judgment.

¶12 Finally, the two acquaintance witnesses who testified at the hearing further substantiated that Appellant, if left untreated, poses a risk of mental, emotional, or physical harm to himself and lacks insight into his mental illness. Both case managers testified that Appellant refuses his medication and has experienced an increase in mood swings as well as an inability to provide basic care for himself. One case manager testified that Appellant has also experienced an increase in paranoia and talking to himself. Therefore, based upon our review of the record, we conclude that the superior court's commitment order is supported by substantial credible evidence and the court did not err in finding Appellant has a mental disorder and is persistently and acutely disabled.



### CONCLUSION

¶13 For the foregoing reasons, we affirm the superior court's findings and order for treatment.

/s/  
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PHILIP HALL, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
MICHAEL J. BROWN, Presiding Judge

/s/  
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PATRICIA K. NORRIS, Judge