DIVISION ONE
FILED: 08/16/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE MH2011-000142	)	No. 1 CA-MH 11-0037
	)	DEPARTMENT A
	)	**MEMORANDUM DECISION**
	)	(Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. MH 2011-000142

The Honorable Veronica W. Brame, Judge *Pro Tempore*

AFFIRMED

William G. Montgomery, Maricopa County Attorney — Phoenix
By Bruce P. White, Deputy County Attorney
Anne C. Longo, Deputy County Attorney
Attorneys for Appellee

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

T I M M E R, Presiding Judge

¶1 At the conclusion of an evidentiary hearing on a petition for court-ordered treatment, the superior court found by clear and convincing evidence that appellant C.W. is

consistently or acutely disabled as a result of a mental disorder and is in need of psychiatric treatment, which he refused to undertake voluntarily. The court then ordered C.W. to undergo a combination of inpatient and outpatient treatment.

¶2 C.W. timely appeals. He argues the court erred because the petitioner failed to present testimony from two acquaintance witnesses as required by Arizona Revised Statutes ("A.R.S.") section 36-539(B) (2009), and insufficient evidence supported the court's finding that he was persistently or acutely disabled as a result of a mental disorder. We review the facts in the light most favorable to upholding the court's judgment, and we will not set any findings aside unless they are clearly erroneous. *In re MH 2008-002596*, 223 Ariz. 32, 35, ¶ 12, 219 P.3d 242, 245 (App. 2009). We review the court's interpretation of statutes de novo as a question of law. *In re MH 2005-001290*, 213 Ariz. 442, 443, ¶ 5, 142 P.3d 1255, 1256 (App. 2007). For the reasons that follow, we affirm.

ANALYSIS

1. Acquaintance witnesses

¶3 Section 36-539(B), A.R.S., mandates the minimum evidence that must be presented to support court-ordered treatment: "[t]he evidence presented by the petitioner or the patient shall include the testimony of two or more witnesses acquainted with the patient at the time of the alleged mental

disorder . . . and testimony of the two physicians who performed examinations in the evaluation of the patient." The requirements of § 36-539(B) are jurisdictional and cannot be waived. *In re Burchett*, 23 Ariz. App. 11, 13, 530 P.2d 368, 370 (1975) (construing predecessor to A.R.S. § 36-539(B)). If a court fails to strictly comply with § 36-539(B), any treatment order is rendered void. *Id.*; *see also In re Maxwell*, 146 Ariz. 27, 30, 703 P.2d 574, 577 (App. 1985) (same).

¶4 C.W. argues that although acquaintances Catherine B. and Kyle J. testified at the hearing, Kyle's testimony "was not relevant to whether [C.W.] has a mental disorder that renders him persistently or acutely disabled," and therefore he did not qualify as an "acquaintance witness" pursuant to A.R.S. § 36-539(B). To support his contention, C.W. cites *In re MH 2008-002596*, 223 Ariz. 32, 219 P.3d 242 (App. 2009) for the principle that § 36-539(B) requires the witness to know the proposed patient *and* provide testimony "relevant to whether the proposed patient has a mental defect." The court in that case held in relevant part as follows:

> The statute requires the testimony of 'two or more witnesses acquainted with the patient at the time of the alleged mental disorder.' A.R.S. § 36-539(B). Black's Law Dictionary defines 'acquainted' as '[h]aving personal, familiar, knowledge of a person, event, or thing.' Black's Law Dictionary 16 (6th ed. 1991). The further statutory requirement in § 36-539(B) is that the

> 'acquaintance' (or to use synonyms, the 'knowledge' or 'familiarity') of the patient be 'at the time of the alleged mental disorder.' This is essentially the same requirement that our rules of evidence impose: personal knowledge (Rule 602) that is relevant (Rule 402) in determining the matter at hand (Rule 401), i.e., whether the patient has the mental defect alleged.

Id. at 36, ¶ 16, 219 P.3d at 246. Contrary to C.W.'s implicit assertion, *In re MH 2008-002596* does not hold that a witness' status as an acquaintance witness under § 36-539(B) turns on the pertinence of the testimony to the proposed patient's mental status; all that is required is that the witness have knowledge of the proposed patient at the time that person is suffering from the alleged mental disorder. Kyle satisfied these criteria by testifying that he and C.W. were "close friends" and they were seeing each other two to three times a week at the time the petition was filed. Regardless of the substance of Kyle's testimony concerning C.W.'s mental status, the court properly concluded that Kyle was an acquaintance witness under § 36-539(B).

¶5 We also disagree with C.W. that Kyle's testimony was irrelevant. Kyle testified he was aware that C.W. had a psychiatric diagnosis and was prescribed medication as a result. Over the course of the year prior to the hearing, Kyle asked C.W. monthly if he was taking his medication. Although Kyle said his questions were "just conversation," the court was free

to disbelieve Kyle and conclude he had spotted a reason to make such persistent inquiries. Additionally, Kyle provided some insight into C.W.'s mental state by testifying he was "not sleeping" and sometimes strung together unconnected thoughts. Thus, even assuming § 36-539(B) required an acquaintance witness to testify directly about matters pertinent to a proposed patient's mental status, Kyle satisfied this requirement.

¶6 For these reasons, the superior court did not err by deciding Kyle's testimony satisfied A.R.S. § 36-539(B).

2. Sufficiency of the evidence

¶7 C.W. next argues the court erred because insufficient evidence supported the court's conclusion that C.W. was consistently or acutely disabled and in need of psychiatric treatment. Specifically, he contends that because testimony via affidavit by a doctor failed to include facts to support her conclusion that C.W. will suffer severe harm if his mental disorder is left untreated, the doctor's testimony was insufficient to support the court's judgment. As petitioner correctly points out, C.W. did not raise this argument to the superior court, and he has therefore waived the argument on appeal. *In re MH2009*-002120, 225 Ariz. 284, 287, ¶ 7, 237 P.3d 637, 640 (App. 2010) (holding that appellant's failure to raise an issue at trial waived the issue on appeal). We therefore do not consider this assignment of error.

CONCLUSION

¶8 For the foregoing reasons, we affirm.

/s/
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/
Patrick Irvine, Judge

/s/
Daniel A. Barker, Judge