IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE PIMA COUNTY MENTAL HEALTH CASE
NO. MH200002091113

No. 2 CA-MH 2014-0004
Filed February 5, 2015

Appeal from the Superior Court in Pima County
No. MH200002091113
The Honorable Peter W. Hochuli, Judge Pro Tempore

AFFIRMED

COUNSEL

Mental Health Defender's Office, Tucson
By Molly Pettry
Counsel for Appellant

Community Partnership of Southern Arizona, Tucson
By Ryan J. Thomsen
Counsel for Appellee

MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge Kelly and Judge Howard concurred.

V Á S Q U E Z, Judge:

¶1 P.B. appeals from the trial court's signed minute entry finding that she remains persistently or acutely disabled as a result of a mental disorder and ordering her continued compliance with a mental health treatment plan. She maintains the petitioner, the Community Partnership of Southern Arizona (CPSA), failed to present clear and convincing evidence to support the court's ruling. For the following reasons, we affirm.

Facts and Procedural History

¶2 In reviewing a trial court's order for involuntary treatment, we view the facts in the light most favorable to sustaining the court's findings and judgment. *In re MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d 1161, 1163 (App. 2009). So viewed, the evidence established the following.

¶3 P.B. does not dispute that she has a mental illness. Her primary diagnosis is paranoid schizophrenia. In June 2013, a Phoenix law enforcement officer sought an emergency evaluation of P.B. after he had been dispatched to Phoenix Sky Harbor Airport and found her "screaming irrational statements about the world being in danger and she needed to go to the U.S. Supreme Court." The officer also reported that P.B. "spoke about vanishing doors and stairs" and attempted to walk into moving traffic. After a court-ordered evaluation and further proceedings, the Maricopa County Superior Court found P.B. persistently or acutely disabled due to a mental disorder, granted a petition for court-ordered treatment, and transferred venue of the case to Pima County, where P.B. lives.

CODAC, an agency that had provided P.B. with treatment in the past, was again designated to provide treatment.

¶4 In May 2014, pursuant to CODAC's statutory obligations under A.R.S. § 36-543(D), Dr. Frederick S. Mittleman, a CODAC employee and P.B.'s treating psychiatrist, conducted an annual review "to determine whether the continuation of court-ordered treatment is appropriate." In the report of his examination, Mittleman wrote that he had treated P.B. on a monthly basis since June 24, 2013, and, in his opinion, P.B. remained persistently or acutely disabled and in need of continued court-ordered treatment. He supported his opinion with clinical observations that P.B. suffered from a "multi year history of psychotic illness," characterized by "paranoid [and] grandiose delusions," and exhibited "very impaired [judgment] when not medicated and [when] psychotic." He also reported that P.B. had limited insight into her mental illness and denied the need for medication, despite experiencing psychosis with delusions, stating she "will not take medications if not in [court-ordered treatment]," but "without medications she becomes psychotic, agitated, [and] delusional." In the doctor's opinion, there were no suitable alternatives to court-ordered treatment and voluntary treatment would not be appropriate; he therefore recommended that court-ordered treatment be continued.

¶5 Consistent with this recommendation, CPSA[1] filed a petition requesting that P.B. be ordered to continue to comply with her treatment plan. After a hearing, the trial court granted the petition, finding by clear and convincing evidence that P.B. remained persistently or acutely disabled as a result of a mental disorder, remained in need of treatment, and was presently unable or unwilling to accept or continue treatment voluntarily. *See* A.R.S. § 36-543(H). This appeal followed.

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[1] CPSA appears to be the Regional Behavioral Health Authority for Pima County, Arizona, under contract with the Arizona Department of Health Services to administer the publicly funded behavioral healthcare system in Pima County.

Discussion

¶6 As the sole issue on appeal, P.B. argues CPSA failed to present clear and convincing evidence that she lacks the capacity to make an informed decision regarding treatment or that her impairment causes her to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting the particular treatment offered. She thus maintains CPSA failed to prove she suffers from a "[p]ersistent or acute disability," as defined in A.R.S. § 36-501(31)(b), as required to support continuation of court-ordered mental health treatment under § 36-543(H).

¶7 An order for involuntary treatment of a mental disorder, or continuation of that treatment, must be based on clear and convincing evidence that the statutory requirements have been met. A.R.S. §§ 36-540(A), 36-543(H). We review de novo "the application and interpretation of statutes," which must be strictly followed in these proceedings. *In re MH 2008-000438*, 220 Ariz. 277, ¶¶ 6, 7, 205 P.3d 1124, 1125-26 (App. 2009). But in reviewing claims of insufficient evidence, "'we view the evidence in the light most favorable to sustaining the order,'" and we will affirm an order supported by substantial evidence. *Id.* ¶ 6, *quoting Cimarron Foothills Cmty. Ass'n v. Kippen*, 206 Ariz. 455, ¶ 2, 79 P.3d 1214, 1216 (App. 2003).

¶8 In relevant part, § 36-501(31) defines a "[p]ersistent or acute disability" as requiring evidence of

> [A] severe mental disorder that . . .
>
> . . . .
>
> (b) Substantially impairs the person's capacity to make an informed decision regarding treatment, and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and

> disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

P.B., a doctoral candidate in psychology, argues Dr. Mittleman's report and testimony were insufficient to establish these criteria. As evidence that "she is capable of making a rational decision regarding her own treatment," she cites Mittleman's testimony that P.B. is not currently psychotic but still maintains strongly held views against taking psychotropic medications. She also notes that she "testified extensively to advantages and disadvantages of the medications, as she has been taking medications on-and-off for Schizophrenia and Bipolar 1 disorder since 2000."

¶9 At the hearing on the petition for continued treatment, P.B. described, in articulate detail, her continuing efforts to manage her mental illness through self-education. She explained how she has benefitted from strategies that include proper diet, physical exercise, physical therapy, yoga, meditation, and availing herself of the support of family, friends, and private sessions—in addition to her court-ordered treatment—with a psychiatrist and psychologist. She testified that she has experienced auditory hallucinations and, more rarely, visual hallucinations, during most of the fourteen years since her first hospitalization, "get[s] overly stressed . . . about a lot of things," and "[has] a lot of fear." She agreed that she has "trouble at times differentiating between reality and what may be [her] experience."

¶10 When asked about the advantages of medication, she explained medication "kind of numbs the fear" she experiences as a result of her mental illness and "causes the fear to be less overwhelming at times." She observed, "[F]ewer bad things tend to happen to me . . . when I'm on the medication" and "I get more stressed out by the bad things that happen to me when I'm off medication." She also talked about side effects she has experienced from taking psychotropic medications, including Tardive

Dyskinesia.[2] But she acknowledged some of these effects have lessened with the lower-dose, monthly injection of Invega currently prescribed.

¶11 Dr. Mittleman, who has provided P.B. with court-ordered treatment during the past year and on previous occasions, testified that P.B. has been placed in court-ordered treatment six times during the last ten years, stating,

> Usually the pattern is this: She's placed on court order. She does quite well. . . . [B]ut shortly after a bit of time goes by[, after her release from court-ordered treatment,] something happens. She becomes increasingly delusional. She thinks that people are out to kill her. She thinks that her life is in danger. She on one occasion in the past has called the police department hundreds of times to protect her from her delusions, literally.

¶12 Dr. Mittleman stated that "[w]hen [P.B.]'s psychotic, you cannot reason with her at all and about all you can do is try to get her to a safe place where she's properly medicated," but "when she's on medication, . . . she's a very intelligent, pleasant person," who exhibits an "underlying . . . distrust, but it's not of a delusional proportion." Based on P.B.'s history, Mittleman expressed the opinion that "without medication this patient will eventually become psychotic," suffering delusions and paranoia that will cause her severe and abnormal mental or emotional harm and impair her judgment, reason, behavior, or capacity to recognize reality. He

[2]"Tardive dyskinesia is a neurological disorder, irreversible in some cases, that is characterized by involuntary, uncontrollable movements of various muscles, especially around the face." *Washington v. Harper*, 494 U.S. 210, 230 (1990). P.B. testified her other side effects include sleep disorders, muscle spasms, blurred vision, memory problems, excessive thirst, and frequent urination.

explained, "she's had hallucinations and becomes extremely fearful because the delusions are real to her."

¶13 Dr. Mittleman further testified to his opinion that "psychotherapy is a very useful treatment" that can "help to minimize hospitalizations" but, by itself, would not be sufficient to prevent P.B. from suffering the mental or emotional harm caused by delusional thinking. Similarly, when asked about P.B.'s use of strategies such as physical therapy, exercise, and yoga to improve her mental condition, Mittleman testified he was aware P.B had been engaging in these activities and "would encourage" them because "anything that helps your general health has potential" to improve mental health—but he added, "I don't believe they will minimize delusions, hallucinations or psychotic symptoms, but they're helpful."

¶14 Relying on *In re MH 91-00558*, 175 Ariz. 221, 854 P.2d 1207 (App. 1993), P.B. asserts an examining psychiatrist "must explain the specific reasons why the patient is incapable of understanding" the advantages and disadvantages of mental health treatment or how a patient's "mental disorder interfered with or impaired her decision-making ability" with respect to treatment. But although P.B. maintains "[t]he record lacks any direct statement" from Dr. Mittleman "as to how the mental illness renders her incapable of understanding [the] advantages and disadvantages of treatment," we cannot agree.

¶15 Dr. Mittleman testified that when P.B. is on medication and is not psychotic, she knows she has a mental illness and is willing to participate in psychotherapy, "but psychotherapy is not the treatment of choice by itself for delusions." He said he has attempted to discuss treatment options with her—such as trying different medications that might have fewer side effects or offering additional treatment for the side effects themselves—and he has lowered the dosage of her current medication in an effort to determine the lowest effective dose. But he characterized her refusal to consider voluntary treatment with any and all psychiatric medication as "fixed," "rigid," and "immovable," as if based on "a radical ideology" that she considers "part of her identity," evinced

by statements such as "I don't believe in psychiatric medications" or "It is wrong to give people psychiatric medications." Although Mittleman "would not call [such views] delusional," he believes they are nonetheless indicative of a "lack of insight in judgment" that is "part of the illness." He further explained that "there is a subgroup" of people with mental illness who "never develop insight" sufficient to "understand their symptoms require treatment," and so are unable to make an "informed decision" about treatment alternatives.

¶16 Dr. Mittleman was the only psychiatrist to testify at the hearing. Much to her credit, P.B. exhibits the willingness and ability to employ beneficial strategies that, as adjuncts to psychiatric medication, can assist in efforts to manage her mental illness. But Mittleman's testimony provided substantial evidence that she continues to suffer from a mental disorder that substantially impairs her capacity to understand and make an informed decision regarding treatment.

Disposition

¶17 The trial court's order for continued involuntary treatment was supported by substantial evidence that P.B. continues to have a persistent or acute disability resulting from a mental disorder. Accordingly, the order is affirmed.