

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE PIMA COUNTY MENTAL HEALTH CAUSE NO. MH20140612

No. 2 CA-MH 2014-0005
Filed February 13, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. MH20140612
The Honorable Peter W. Hochuli, Judge Pro Tempore

AFFIRMED

COUNSEL

Pima County Mental Health Defender's Office, Tucson
By Sarah Medley
Counsel for Appellant

Barbara LaWall, Pima County Attorney
By Barbara S. Burstein, Deputy County Attorney, Tucson
Counsel for Appellee

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

ESPINOSA, Judge:

¶1 Following a commitment hearing, the trial court found by clear and convincing evidence that appellant is persistently or acutely disabled as a result of a mental disorder, in need of treatment, and is either unable or unwilling to accept or continue treatment voluntarily. Pursuant to A.R.S. § 36-540(A), the court ordered that appellant receive mental health treatment for one year, including, if needed, no more than 180 days of inpatient treatment “in a level one behavioral health facility.” Appellant challenges that order, maintaining the court erred in finding clear and convincing evidence that his mental health symptoms “rose to the level of severe harm.”¹ For the following reasons, we affirm the court’s ruling.

¹To prove that a person has a persistent or acute disability within the meaning of A.R.S. § 36-501(31) requires proof of “a severe mental disorder that meets . . . the following criteria:”

- (a) If not treated has a substantial probability of causing the person 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.
- (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

IN RE PIMA CNTY. MENTAL HEALTH CAUSE NO. MH20140612
Decision of the Court

¶2 “Because involuntary treatment proceedings may result in a serious deprivation of appellant’s liberty interests,” *In re Maricopa Cnty. Superior Court No. MH 2001-001139*, 203 Ariz. 351, ¶ 8, 54 P.3d 380, 382 (App. 2002), the applicable statutes must be strictly followed. *In re Maricopa Cnty. Superior Court No. MH 2003-000058*, 207 Ariz. 224, ¶ 12, 84 P.3d 489, 492 (App. 2004). We uphold an order for treatment unless it is “clearly erroneous or unsupported by any credible evidence.” *In re Maricopa Cnty. Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995).

¶3 Psychiatrists Pamela Mirsky and Vicki Knight each evaluated the fifty-four-year old appellant and testified at the 2014 commitment hearing that he suffers from a psychotic disorder not otherwise specified, a mental illness that will cause him to “suffer or continue to suffer severe mental, physical or emotional harm” without treatment. Dr. Minsky reported: appellant believed the Tucson Police Department (TPD) “had been ‘conducting illegal wiretapping and stalking’ him since 2009 and that he was ‘harassed’ by a clerk at the Dollar Tree store and believed TPD was behind it ‘as usual’”; appellant stated he “would use deadly force if any white officers c[a]me after [him]”; and he had “grandiose delusion[s]” that he would make a bid to purchase “the remains of the Bernie Madoff Investments” and would make “trades” for “no less than \$100 trillion in stock or \$400 million shares.” Minsky also testified appellant believed “the police were using [Minsky] as part” of a plan to “undermine him.” Dr. Knight testified that appellant was “already experiencing emotional harm as a result of his symptoms because he is very deeply convinced that wherever he goes and whatever interactions he has with others . . . involve somehow a police conspiracy against him.”

treatment offered after the advantages, disadvantages and alternatives are explained to that person.

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

IN RE PIMA CNTY. MENTAL HEALTH CAUSE NO. MH20140612
Decision of the Court

¶4 Appellant contacted TPD by telephone in August 2014; a recording of that conversation was played and admitted as an exhibit at the commitment hearing. The officer who took the call testified that although appellant “was yelling and . . . was too excitable,” to the extent she understood him, he had stated TPD was “conspiring against him” and “was using taxpayer’s money to engage in civil rights violations and corporate espionage.”

¶5 Appellant also filed several complaints with TPD and the City of Tucson which were admitted as exhibits at the commitment hearing. In his complaints appellant discussed at length TPD’s surveillance efforts; the harassment he had received at the Dollar Tree store at the behest of TPD; his current efforts to “conduct[] a \$5 Quadrillion all stock tax free global transaction to create jobs”; and his having been forced to move to different apartments several times and to change his cellular telephone number due to TPD’s surveillance. Appellant testified at the commitment hearing and stated, inter alia, that TPD’s surveillance is “not a delusion.”

¶6 As the sole issue on appeal, appellant contends the state failed to show clear and convincing evidence of a substantial probability he would suffer severe harm if he was not treated. *See* A.R.S. § 36-501(31)(a). He does not dispute the evidence showed he “was suffering some emotional or mental harm,” but instead asserts “the State failed [to] show that this distress rises to the level of severe,” noting that “his concerns are not affecting his daily life.” We disagree.

¶7 The credible evidence from which the trial court could order involuntary treatment included testimony, documents and audio evidence establishing appellant’s obsession with his beliefs that TPD had targeted him and that his interactions with others, including Dr. Minsky, were controlled by TPD. That obsession prompted appellant to change apartments several times to avoid perceived surveillance by TPD.

IN RE PIMA CNTY. MENTAL HEALTH CAUSE NO. MH20140612
Decision of the Court

¶8 Moreover, both evaluating physicians stated in addendums to their affidavits that appellant suffered from “paranoid delusions,” his judgment was impaired, and absent treatment, he would “suffer or continue to suffer severe and abnormal mental, emotional, or physical harm.” Dr. Knight also testified that appellant’s “interactions with others are constantly tainted by this perception that they’re somehow part of this conspiracy and they are somehow meant to harm him and so he becomes very isolated from others and very limited in his interactions with others as a result of that.” The state urged in its closing argument that appellant “is persistently or acutely disabled in that his beliefs . . . that people are following him and he is under investigation are very distressful to him and are severely, emotionally and mentally harmful” to him.

¶9 Although appellant contends the trial court “failed to specifically address how that harm was severe or abnormal,” the record shows the court expressly asked both sides to address the court’s “biggest issue,” to wit, “[a]t what level does [the harm] become severe”? Following argument by both sides, the court rejected appellant’s assertion that severe harm had not been established, noting his written complaint against TPD was “not something that you can put together in five minutes but it appears that [appellant’s] life currently is an obsession with what he believes [TPD] is doing against him, specifically[] without any proof that [TPD] is actually doing anything.” *See In re Pima Cnty. Mental Health No. MH-2010-0047*, 228 Ariz. 94, ¶ 17, 263 P.3d 643, 647 (App. 2011) (trial court in best position to weigh evidence and resolve conflicts in evidence).

¶10 The court also pointed to appellant’s telephone conversation with TPD, noting that appellant “was yelling” and “getting upset,” and concluding he is “paranoid” in his interactions with others, and that “[h]e was hard to understand in court” and “[h]e was getting upset.” The court queried, “Isn’t that severe emotional and mental abuse to him that he believes that those things are happening when there is no evidence that in fact any of that is happening—much less being conspired [against] by [TPD]?” The court then concluded that, even though appellant had been able to

IN RE PIMA CNTY. MENTAL HEALTH CAUSE NO. MH20140612
Decision of the Court

take care of his daily needs, it nonetheless believed his condition was “still causing emotional and mental harm.”

¶11 Finally, to the extent appellant suggests the absence of the word “severe” from the trial court’s ruling in any way diminishes that ruling, we disagree. *See Marco C. v. Sean C.*, 218 Ariz. 216, n.3, 181 P.3d 1137, 1141 n.3 (App. 2008) (court’s comments at hearing permit inference it applied statute in its entirety); *see also Pima Cnty. No. MH-2010-0047*, 228 Ariz. 94, ¶ 14, 263 P.3d at 646-47 (we infer trial court ruled on specific argument before it).

¶12 For the reasons stated, the trial court’s order that appellant undergo mental health treatment is affirmed.