

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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IN RE PIMA COUNTY MENTAL HEALTH NO. MH20060113318

No. 2 CA-MH 2018-0006  
Filed March 28, 2019

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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NOT FOR PUBLICATION  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).

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Appeal from the Superior Court in Pima County  
No. MH20060113318  
The Honorable Julia Connors, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

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

Barbara LaWall, Pima County Attorney  
By James W. Rappaport, Deputy County Attorney, Tucson  
*Counsel for Appellee*

**MEMORANDUM DECISION**

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Judge Vásquez concurred.

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BREARCLIFFE, Judge:

¶1 S.A. appeals from the trial court’s signed minute entry finding she is persistently or acutely disabled as a result of a mental disorder and ordering her compliance with a one-year, mental health treatment plan. She maintains the petitioner, Palo Verde Hospital Behavioral Health Services (“Palo Verde”), failed to present clear and convincing evidence to support the court’s ruling. Specifically, she argues the record lacks clear and convincing evidence that she is unable to understand and express an understanding of the advantages, disadvantages, and alternatives to treatment after they have been explained, *see* A.R.S. § 36-501(32)(b), or is unable or unwilling to voluntarily accept mental health treatment, *see* A.R.S. § 36-540(A). We affirm.

**Factual and Procedural Background**

¶2 In reviewing an order for involuntary treatment, we view the facts in the light most favorable to sustaining the trial court’s findings and judgment. *In re MH2008-001188*, 221 Ariz. 177, ¶ 14 (App. 2009). S.A. has been diagnosed with bipolar disorder and an unspecified personality disorder, and she was previously hospitalized in 2006, 2008, and 2010. In August 2018, she and her husband arrived at Palo Verde seeking mental health treatment for S.A. Nurse D.K., who testified at the hearing, said both looked exhausted and unkempt, and S.A. was pacing, yelling obscenities, and grabbing her own vaginal area. According to D.K., S.A.’s husband said “she had hardly eaten or slept for several days,” and that, although she had experienced such episodes in the past, “this was the worst he had ever seen her.” D.K. described S.A. as having “very disorganized” thoughts that lacked a basis in reality, and she reported S.A. could not answer questions “due to [her] responding to internal stimuli, thought blocking, [and] loose and tangential thinking.” The nurse was unable to perform a mental health assessment on S.A., and she filed an application for an emergency admission for an evaluation, alleging S.A. was a danger to herself. *See* A.R.S. § 36-524(C).

¶3 The application was granted, and Palo Verde subsequently petitioned the trial court to order a combination of inpatient and outpatient treatment, pursuant to § 36-540(A)(2). In its petition for court-ordered treatment, Palo Verde made various allegations in accordance with A.R.S. § 36-533(A), which requires the petition to allege that “as a result of mental disorder,” the patient “has a persistent or acute disability,” that “treatment alternatives . . . are appropriate or available,” and that she was “unwilling to accept or incapable of accepting treatment voluntarily.” The petition was accompanied by the affidavits of two physicians, Ranier Diaz, M.D., and Mark Helms, M.D., who participated in the evaluation and who were statutorily required to “describe in detail the behavior that indicates that [S.A.], as a result of mental disorder, . . . has a persistent or acute disability” and to include “[a] summary of the facts that support [those] allegations.” § 36-533(B).

¶4 S.A. argues those physicians’ affidavits, along with their testimony at the hearing, were insufficient to establish by clear and convincing evidence that she is unable to understand and express an understanding of the advantages, disadvantages, and alternatives to treatment, as required for a finding of a persistent or acute disability. *See* A.R.S. § 36-501(32).<sup>1</sup> She also maintains the evidence was insufficient to

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<sup>1</sup>Pursuant to A.R.S. § 36-501(32),

“Persistent or acute disability” means a severe mental disorder that meets all 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

establish that she was unable to voluntarily accept mental health treatment, as required for court-ordered treatment. *See* § 36-540(A).

### Discussion

¶5 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 (App. 2009). But when considering a challenge to the sufficiency of the evidence, we will affirm an involuntary treatment order if the superior court’s findings are supported by substantial evidence and are not clearly erroneous. *In re MH 2008-001188*, 221 Ariz. 177, ¶ 14; *see also In re Maricopa Cty. Mental Health No. MH 94-00592*, 182 Ariz. 440, 443 (App. 1995).

¶6 We conclude substantial evidence supports the trial court’s required findings here. We cannot agree with S.A. that there was no evidence “that either Dr. Diaz or Dr. Helms engaged S.A. in a discussion about advantages, disadvantages, and alternatives to treatment” including “the course of her illness if left untreated.”

¶7 Dr. Diaz reported that, based on his examination, S.A.’s insight and judgment were “poor,” and that she had “limited understanding of her mental illness.” He testified she had been “very psychotic” when she first arrived at Palo Verde, and, although “most of her psychosis ha[d] been resolved” after several days of treatment when he wrote his affidavit, she did not remember why she was brought to the hospital and suggested it was because her husband “could not handle her.” She told the doctor, “I’m stable. I can control myself,” and she asked to be discharged. She also told him she had a medication at home, Geodon, that she takes “only if she needs it,” which she described as “in case I get manic.”

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particular 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.

Although the petition originally alleged S.A. was also “a danger to self,” § 36-533(A)(1), the state declined to proceed on that basis, and the allegation was dismissed.

¶8 Based on this discussion with S.A., as well as her husband's report that she had improved "tremendously" when Geodon was administered during her hospital visit in 2010, Diaz attempted to treat her with that drug. Unfortunately, "she didn't improve" when Geodon was administered to her at Palo Verde, and Diaz had to explain to S.A. that it "was not helping her." S.A. continued to require "one-to-one" supervision until she began treatment with Lithium, Lorazepam, and Risperdal.

¶9 Dr. Diaz said he had spoken with her "since the first day" he was assigned to her case "about the benefits from medication," but he agreed that "her diagnosis substantially impairs her ability to make an informed decision about how to proceed with her mental-health treatment."<sup>2</sup> Diaz stated that S.A. "is doing better," but he noted that she regularly "brings up about being on Geodon," and he explained that using that medication "as needed when she felt manic . . . is not the best way to treat Bipolar disorder."

¶10 Accordingly, although S.A. told Diaz, as well as the trial court, that she would continue taking medications without a court order, when asked if he believed she would follow her treatment plan voluntarily, Diaz responded, "I don't think so and that is my fear." He further testified, "[I]f she stops taking medication there is a high probability that she is going to decompensate and she would have the psychotic symptoms back again."

¶11 Dr. Helms agreed it would be appropriate to treat S.A. pursuant to a court order. He diagnosed S.A. as having "[b]ipolar disorder, most recent[ly] manic with psychosis," a severe but treatable mental illness. He had happened to be nearby when she first arrived at Palo Verde and "saw how debilitated she was there on the floor mumbling and disheveled" and "speaking a lot of nonsense." But by the time of his evaluation, three days later, he "was very impressed with how well she had improved, clinically," testifying, "I think definitely the medication she is on is definitely having significant positive effects in stabilizing her."

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<sup>2</sup>When asked directly if he talked to or attempted to talk to S.A. "about the advantages, disadvantages[,] and alternatives to court ordered treatment," Dr. Diaz answered, "Yes[,] I talked with her the day of the evaluation. She was assigned to me[,] so I had the opportunity to talk with her on a daily basis." We cannot agree with S.A. that the prosecutor's reference to "court ordered" treatment caused the discussion of S.A.'s alternative treatment options to be statutorily inadequate.

¶12 He referred to his discussions with S.A. about the advantages and disadvantages of medication, noting that she had told him “she prefers to take the medications quote as needed unquote.” But Helms explained this is “just an unheard of way to treat bipolar [disorder],” stating, “You can’t treat bipolar disorder as needed. It’s all about maintenance medication to keep an episode from happening.” As further evidence of S.A.’s inability to understand the advantages of maintenance medication, Helms noted that S.A. had told him her improvement at Palo Verde “was not because of the medication” but was the result of her getting “caught up on sleep—so she couldn’t even connect her improvement with the medication that stabilized her.” He testified, “I just find it hard to believe that she would take medication on her own voluntarily when she doesn’t believe that medication is what stabilized her.”

¶13 Similarly, in his evaluation report, Dr. Helms wrote that S.A. “has dramatically improved on medications, but she seems to lack insight regarding her need for ongoing medication prescription.” Again referring to his discussions with S.A. about her treatment alternatives, he wrote, “She believes all medications are bad for her and does not seem to appreciate or have insight into the benefit of medications for keeping her bipolar disorder stable.” He expressed his doubt that “she would continue medications voluntarily in the outpatient setting without court ordered treatment.”

¶14 Aspects of S.A.’s testimony at the hearing seem to support the concerns expressed by Dr. Diaz and Dr. Helms. She spoke of her past experience trying different medications and having had bad reactions to them, including lymphedema in her legs. Although she said she would “[a]bsolutely” continue treatment with maintenance medications voluntarily, she could not identify any advantage to doing so, stating, she “had far many more episodes of imbalance when [she] was on the medications.” She described herself as an alcoholic who has been sober for seven years, and she said her sobriety “has made a tremendous difference” for her mental health. She also said she had been working with a psychiatrist on an outpatient basis and has been educated about “alternative treatments,” such as “[a]ll sorts of benefits from [Vitamin] B-12, multitasking, [other] vitamins, approaches to different stress issues, staying away from sugar, caffeine, gluten, staying away from egg.” When asked whether she believed something had “triggered” her recent psychotic episode, she did not mention the absence of maintenance medication for her bipolar disorder, but instead blamed herself for having ingested sugary “goodies” and caffeine and for “staying up to[o] late.”

Decision of the Court

¶15 This testimony seems consistent with Dr. Helms’s opinion that S.A. “is going to want to treat herself on her own terms with supplements” and lacks “the insight to recognize her need for at least some degree of maintenance therapy with psychotropic medications to avoid her de-compensating.” He added, “She presented extremely psychotic and manic with a very concerned husband and I think there’s a very high risk that she will de-compensate quickly after this hospitalization if she is not on maintenance medication.”

¶16 S.A. relies on her own promises of future compliance to argue the trial court erred in concluding she would be unable or unwilling to voluntarily accept mental health treatment. *See* § 36-540(A). But we do not reweigh the evidence on review. *In re Pima Cty. Mental Health No. MH-2010-0047*, 228 Ariz. 94, ¶ 17 (App. 2011).

¶17 Notwithstanding S.A.’s challenge on appeal, the record supports the trial court’s finding that S.A. is persistently or acutely disabled with respect to her inability to understand or articulate the advantages and disadvantages of alternative treatments, “after the advantages, disadvantages and alternatives” had been explained. § 36-501(32)(b). Substantial evidence also supports the court’s finding that S.A. is unable or unwilling to voluntarily accept mental health treatment. *See* § 36-540(A). As Dr. Diaz opined in his affidavit, S.A. “appears to be suffering from severe mental illness,” “continues to have a very limited insight regarding her mental problem,” “want[s] to take her medication as needed only when she gets manic,” and “most likely will not follow up her outpatient treatment plan and recommendations.” This is not an instance in which a petitioner relied on a “bare assertion that the statutory criterion was met, without any explication of the facts.” *In re Maricopa Cty. Mental Health Case No. MH 94–00592*, 182 Ariz. 440, n.4 (App. 1995). Each of the doctors related communications with S.A. that supported his conclusions about her condition.

**Disposition**

¶18 For the foregoing reasons, we affirm the trial court’s order requiring S.A. to undergo court-ordered treatment.