

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 27 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-MH 2010-0008
)	DEPARTMENT B
IN RE PINAL COUNTY MENTAL)	
HEALTH NO. MH201000119)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure
)	
)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Honorable Craig A. Raymond, Court Commissioner

VACATED

James P. Walsh, Pinal County Attorney
By Catherine M. Bohland

Florence
Attorneys for Appellee

Mary Wisdom, Pinal County Public Defender
By Lisa M. Surhio

Florence
Attorneys for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 At a hearing on a petition for court-ordered treatment (COT), the trial court found by clear and convincing evidence that appellant is persistently or acutely disabled as a result of a mental disorder, is in need of treatment, is either unable or unwilling to accept treatment voluntarily, and that there were no appropriate alternatives to COT. *See* A.R.S. § 36-540(A), (B). The court ordered that appellant receive inpatient treatment limited to 180 days. *See* § 36-540(A)(3), (F)(3). Because the court ruled without being “presented a record of all drugs, medication or other treatment” appellant received during the seventy-two hours before the hearing, we vacate the order committing appellant for involuntary mental health treatment. A.R.S. § 36-539(A).

¶2 Because a person’s involuntary commitment “may result in a serious deprivation of liberty,” strict compliance with the applicable statutes is required. *In re Coconino County Mental Health No. MH 1425*, 181 Ariz. 290, 293, 889 P.2d 1088, 1091 (1995); *see also In re Maricopa County Mental Health No. MH 2003-000058*, 207 Ariz. 224, ¶ 12, 84 P.3d 489, 492 (App. 2004). “The requirements of . . . most of the provisions of Title 36 . . . are set forth with precision and clarity. When the legislature has spoken with such explicit direction, our duty is clear.” *In re Coconino County Mental Health No. MH 95-0074*, 186 Ariz. 138, 139, 920 P.2d 18, 19 (App. 1996). Absent strict compliance with the statutory requirements, we must vacate a commitment order. *See id.* A question of statutory interpretation presents an issue of law, which we review de novo. *In re MH 2006-000749*, 214 Ariz. 318, ¶ 13, 152 P.3d 1201, 1204 (App. 2007).

¶3 Section 36-539(A), which addresses appropriate conduct at the hearing on COT, provides:

The medical director of the agency shall issue instructions to the physicians . . . treating the proposed patient to take all reasonable precautions to ensure that at the time of the hearing the proposed patient shall not be so under the influence of or so suffer the effects of drugs, medication or other treatment as to be hampered in preparing for or participating in the hearing. The court at the time of the hearing shall be presented a record of all drugs, medication or other treatment that the person has received during the seventy-two hours immediately before the hearing.

¶4 At the hearing, petitioner’s counsel asked psychiatrist Esad Boskailo, who testified by telephone, what medications appellant had taken in the seventy-two hours before the hearing. Although Boskailo was able to name one of the medications appellant had taken, which he testified would not hamper her ability to participate in the proceedings, he explained that he had been provided with the “wrong sheet” and stated he needed “two minutes” to “go back to the unit” to get appellant’s medical charts in order to fully answer the question. The court responded, “No, Doctor. I don’t have time for that,” and directed counsel to proceed with her next question. No other witness testified about the drugs, medications or treatment appellant had received during the seventy-two hours immediately preceding the hearing, nor does the record indicate that a written record providing this information was presented to the court.

¶5 On appeal, appellant contends she was denied due process of law because the trial court was not presented with a record of the drugs, medications or other treatment that she had received in the seventy-two hours before the hearing. At the

hearing, counsel made this very argument to the court, an argument it apparently rejected. Because of the court's failure to strictly comply with the statute, appellant asks that we vacate the order for involuntary treatment. The state concedes error, and urges us to grant the relief appellant seeks.

¶6 In light of the trial court's failure to comply with the statute, we vacate the court's August 25, 2010, order committing appellant for involuntary mental health treatment. See *In re MH 2006-000023*, 214 Ariz. 246, ¶¶ 10-12, 150 P.3d 1267, 1269-70 (App. 2007) (vacating order for involuntary treatment in absence of evidence showing court had strictly complied with statutory requirements of civil commitment statutes).

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge