IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE PINAL COUNTY MENTAL HEALTH NO. MH-200800072	)	2 CA-MH 2008-0007 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Honorable Janna L. Vanderpool, Judge

AFFIRMED

James P. Walsh, Pinal County Attorney
By Ronald S. Harris
Florence
Attorneys for Appellee

Mary Wisdom, Pinal County Public Defender
By Jennifer L. Bergeron
Florence
Attorneys for Appellant

B R A M M E R, Judge.

¶1 After a hearing held pursuant to A.R.S. § 36-539(B), the trial court found by clear and convincing evidence that appellant is persistently or acutely disabled as the result of a mental disorder, is in need of psychiatric treatment, and is either unable or unwilling to accept treatment voluntarily, and that there were no appropriate alternatives to court-ordered treatment. As authorized by A.R.S. § 36-540(A) and (C), the court ordered that he receive

a combination of inpatient and outpatient mental health treatment for a period not to exceed one year, including "at least 25 days" of "local inpatient treatment."

¶2 Appellant, a Spanish speaker, contends he was denied due process of law because only one of the two evaluating psychiatrists used the services of a trained interpreter in conducting the evaluation required by A.R.S. §§ 36-529 and 36-530. He claims the other psychiatrist, Dr. Cowley, relied instead on appellant's wife and his mental health case manager, Rocio Arveson, to interpret for Cowley and appellant during Cowley's evaluation. Appellant claims he was further denied due process when the court permitted Arveson to testify at the evidentiary hearing as an acquaintance witness after she had "participated in the court[-]ordered evaluation." For the reasons discussed below, we find no denial of appellant's right to due process and affirm the trial court's order.

Factual and Procedural Background

¶3 Appellant is a forty-four-year-old, unemployed, husband and father with a history of mental illness and previous psychiatric hospitalizations. His daughter testified that his mental condition had deteriorated after he had stopped taking his prescribed medications. After a period of not sleeping and refusing to eat because he believed his food was being poisoned, appellant left home one night as his family slept. Family members found him walking "in [the] middle of [a] busy street and highway," seemingly oblivious to passing traffic and the danger he was in. He resisted the entreaties of his relatives and his case manager to stop walking in the road and get into a vehicle with them instead. Finally, one of his brothers successfully "put [appellant] in the car." He was taken to a hospital and

subsequently admitted for an emergency evaluation. His daughter later testified appellant had similarly taken off walking "[t]he first time he got sick" and had ended up in Mexico.

¶4 The trial court granted the petition for evaluation filed pursuant to A.R.S. § 36-523. As required by A.R.S. § 36-533(B), appellant was evaluated by two psychiatrists, Dr. Stephen Borodkin and Dr. Larry Cowley, neither of whom spoke Spanish. Based on those evaluations, Dr. Cowley, as medical director of the screening agency, *see* A.R.S. § 36-531(B), signed a petition for court-ordered treatment, *see* § 36-533. The petition was accompanied by the affidavits of both psychiatrists as required by § 36-533(B). At the evidentiary hearing required by § 36-539, the witnesses included Drs. Borodkin and Cowley as well as Arveson and appellant's daughter.

¶5 Dr. Borodkin testified that he had interviewed appellant on October 10, 2008, using a Spanish-speaking interpreter. Borodkin's affidavit states: "Because [appellant] primarily speaks Spanish, an interpreter was used: Jaime Fernandez of 'A Foreign Language Service' . . . ." Dr. Cowley interviewed appellant twice, first on October 10, then again briefly on October 21, 2008. At the first of those interviews, appellant's wife and Arveson were also present. Cowley's affidavit states: "The patient was interviewed in the office at the P[sychiatric] A[cute] C[are] [unit] with his wife . . . and case manager, Rocio Arveson, both of whom spoke Spanish and acted as interpreters during this evaluation." For the second interview on October 21, only appellant and Cowley were present. Cowley testified that, although he had originally been told appellant spoke only Spanish, he discovered appellant understood at least some English. On that second occasion, Cowley testified: "It

was a brief conversation, but [appellant] was able to understand and express to me that he understood what I was talking about in that one. That was just the two of us."

¶6 Precisely why on October 10 Dr. Cowley did not utilize the same interpreter who had translated during Dr. Borodkin's evaluation the same day is simply not explained by Cowley's testimony that,

> because we had an interpreter service set up for the evaluation when Doctor Borodkin was going to see him, and I didn't think it would have been appropriate for me to be there at the same time Doctor Borodkin was doing it through the official interpreter, I asked to see the patient, knowing—I heard his case manager and wife were coming, so I asked to do mine. That way I would have an independent evaluation.

The record yields no additional explanation.

Issues and Discussion

¶7 "'[B]ecause civil commitment constitutes a significant deprivation of liberty, the state must accord the proposed patient due process protection.'" *In re MH 2006-000749*, 214 Ariz. 318, ¶ 14, 152 P.3d 1201, 1204 (App. 2007), *quoting In re Maricopa County No. MH 90-00566*, 173 Ariz. 177, 182, 840 P.2d 1042, 1047 (App. 1992) (alteration in *In re MH 2006-000749*). The applicable commitment statutes must be strictly construed, *In re Maricopa County No. MH 2003-000058*, 207 Ariz. 224, ¶ 12, 84 P.3d 489, 492 (App. 2004); *In re Pima County Mental Health No. MH-1140-6-93*, 176 Ariz. 565, 567, 863 P.2d 284, 286 (App. 1993), and their requirements scrupulously followed. *In re Maricopa County No. MH 2001-001139*, 203 Ariz. 351, ¶ 8, 54 P.3d 380, 382 (App. 2002); *In re Coconino County Mental Health No. MH 95-0074*, 186 Ariz. 138, 139, 920 P.2d 18, 19 (App. 1996).

¶8 Appellant's claim that he was denied due process finds no direct support in the commitment statutes, which provide only—in defining an "[e]valuation"—that "every reasonable attempt shall be made to conduct the evaluation in any language preferred by the person" being evaluated. A.R.S. § 36-501(12)(b). Despite the statutes' silence on the specific point appellant raises and the apparent lack of case law on point, appellant contends "the more reasonable accommodation" is to use "an official trained and/or certified interpreter from an interpreting service," as Dr. Borodkin did during his evaluation, but Dr. Cowley did not. In his reply brief, appellant asserts that the arrangements made for Borodkin "establish the reasonableness standard in this instance." But appellant has cited, and we have independently found, no legal authority supporting either of these contentions.

¶9 Appellant raised the issue below by moving at the beginning of the evidentiary hearing to preclude Dr. Cowley's testimony. The focus of his motion was not the quality or accuracy of the Spanish translation provided by appellant's wife and case manager but, rather, the allegation that neither "c[ould] be considered unbiased because of their relationship with the patient and their role in the petition for court-ordered treatment, . . . [because] both wrote witness statements that were used in the emergency application for the court-ordered evaluation." Asked by the court whether she was asserting "[a]ny issues of bad faith or any concerns of intent on their part that would lead the Court to believe they did not interpret . . . correctly," appellant's counsel replied that "the primary basis is the appearance of this, that it couldn't be unbiased because both of those individuals have already

participated as witnesses and were used in the court-ordered evaluation for the emergency petition."

¶10 Before ruling on the motion, the trial court took testimony from both appellant's wife and case manager to determine "what their motivation was at the time of the interpretation." The court's questioning established that appellant's wife did not speak sufficient English for her to have translated effectively for her husband[1] and that it was his bilingual case manager, Arveson, who had acted as interpreter during Cowley's evaluation. After allowing the parties to question Arveson also, the court made the following findings and ruling:

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[1]We are skeptical of appellant's characterization of his wife's statements as "admitt[ing] to purposefully misstating Appellant's responses to Dr. Cowley" during the evaluation. In response to the court's questioning, appellant's wife testified, through an interpreter:

> The doctor asked [appellant], how are you doing? He said, I'm doing good. I said, no, he's not. I can't remember the other questions that [Cowley] asked, but like I said, he would [ask] like, are you doing okay? [Appellant] said, yes. I said, no because that's the way he answers. He has a habit of answering that way. Says he's really doing good when really he is not.

Asked whether she had interpreted any of her husband's statements to Dr. Cowley, appellant's wife testified:

> The only thing is when some of the questions were asked, he has the habit of saying that he is doing good and, I'm doing good, I'm doing good. Then I just on those occasions I moved his head, I shook his head [sic] and because he doesn't—he has a tendency of saying he's okay and everything is going okay, when that is not true. On those occasions only I did that.

> I will start with [appellant's wife]. It does not appear that you interpreted anything from your husband to Doctor Cowley or from Doctor Cowley to your husband[.] [F]or that reason I don't find that Doctor Cowley was under any misinformation or the potential of any misinformation in that realm.
>
> As to you, Ms. Arveson, I don't believe that there's any reason to draw the conclusion that you did not interpret things clearly or accurately; that you were unable to, or for some reason had bias or prejudice, so I don't find any difficulty with the information that was transferred from you to Doctor Cowley or from Doctor Cowley to [appellant] through you.
>
> And I'm not going to preclude Doctor Cowley's testimony based upon that.

¶11 When an interpreter is used in court proceedings, it is for the trial court to determine in the exercise of its discretion whether the interpreter is qualified. *In re MH 2007-001895*, No. 1 CA-MH 08-0006, ¶ 9, 2009 WL 322155 (Ariz. Ct. App. Feb. 10, 2009); *State v. Mendoza*, 181 Ariz. 472, 475, 891 P.2d 939, 942 (App. 1995). "Under *Mendoza*, the burden is on Appellant to show that an interpreter was somehow deficient resulting in an unfair hearing." *In re MH 2007-001895*, 2009 WL 322155, ¶ 12. We "'will not reverse the trial court unless there is a clear abuse of discretion.'" *Id.* ¶ 9, *quoting Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 455, 652 P.2d 507, 528 (1981). A court may abuse its discretion if it makes an error of law while reaching a discretionary decision or reaches its conclusion without considering the evidence. *Grant*, 133 Ariz. at 455-56, 652 P.2d at 528-29.

¶12 Applying those principles to the out-of-court psychiatric evaluation at issue here, we find no abuse of the trial court's discretion. Having cited no legal authority requiring the procedure he advocates, appellant cannot demonstrate that the court committed

an error of law. The majority of appellant's contentions on appeal invite us to invade the trial court's province by reweighing the evidence and second-guessing its factual findings, something this court will not do. *See In re MH 2007-001236*, No. 1 CA-MH 07-0025, ¶ 15, 2008 WL 3906374 (Ariz. Ct. App. Aug. 26, 2008) (factual findings only set aside if clearly erroneous or unsupported by substantial evidence); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002) (trial court best situated to observe witnesses, judge credibility, weigh evidence, and make findings of fact, to which this court defers "unless no reasonable evidence supports those findings"). The court entertained appellant's allegations of bias, heard testimony from both appellant's wife and case manager, and considered the evidence and the arguments of counsel before making its findings. We thus cannot say the court abused its discretion in finding no evidence of bias, prejudice, or inaccurate translation and, therefore, no denial of due process resulted from Cowley's reliance on Arveson to interpret during his evaluation of appellant.

¶13 In his second issue, appellant contends Arveson could not properly testify at the evidentiary hearing as one of the two acquaintance witnesses required by § 36-539(B) because she had "participated" in appellant's evaluation, both as an interpreter and as his case manager. As authority for his argument, appellant relies, mistakenly, on *In re Coconino County MH No. 1425*, 181 Ariz. 290, 889 P.2d 1088 (1995). As described in the opening paragraph of that decision, the issue in that case was "whether examiners retained to evaluate the mental health of a person facing involuntary commitment may serve as witnesses 'acquainted with the patient' under A.R.S. § 36-539(B)." *Coconino County MH No. 1425,*

181 Ariz. at 291, 889 P.2d at 1089. Answering that question in the negative, the court interpreted the statute's conjunctive language—requiring the "'testimony of *two or more* witnesses acquainted with the patient . . . *and* testimony of *the two physicians* who performed . . . evaluation[s] of the patient'"—to mean that, "under our statutory scheme . . . no person whose primary contact with the patient was to examine the patient during his or her commitment evaluation process may testify at the hearing as one of the required acquaintance witnesses." *Coconino County MH No. 1425*, 181 Ariz. at 292, 889 P.2d at 1090, *quoting* § 36-539(B).

¶14 Plainly, as appellant's mental health case manager for more than two years, Arveson was not a person "whose primary contact with [appellant] was to examine [him] during his . . . commitment evaluation process." *Id.* To the contrary, she was well qualified "to give the trial court . . . [information about] how the patient behaves in situations other than commitment evaluation interviews." *Id.* As the supreme court observed in *Coconino County MH No. 1425*, "the statute is tightly drawn to avoid situations . . . where the patient appears to have been committed primarily on the opinion and observations of one psychiatrist." *Id.* at 293, 889 P.2d at 1091. That was not the situation here.

¶15 Arveson was not responsible for evaluating appellant, nor does the record suggest she "participated in the psychological evaluation of the patient" in that capacity. *Id.* at 293, 889 P.2d at 1091. Consequently, *Coconino County MH No. 1425* is inapposite, and appellant has cited no other authority to support his contention that Arveson should not have been allowed to testify as an acquaintance witness. We therefore reject his argument that,

by being present during the evaluation, acting as an interpreter, and answering Cowley's limited questions about her relationship with appellant,[2] Arveson "participated in the evaluation" to such an extent that she could no longer testify as an acquaintance witness.

Conclusion

¶16 Because we find no merit to appellant's claims that he was denied due process of law, we affirm the trial court's order of October 22, 2008, requiring appellant to undergo involuntary mental health treatment.

_____
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

_____
PETER J. ECKERSTROM, Presiding Judge

_____
GARYE L. VÁSQUEZ, Judge

[2]In response to questioning by appellant's counsel, Arveson testified: "[Dr. Cowley] did ask me if I knew the patient. He asked me about what my relationship was with him and he also asked me about how did I find him or what did I do with him, and that's what he asked me."