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.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE PINAL COUNTY MENTAL HEALTH NO. MH-200900068

2 CA-MH 2009-0004
DEPARTMENT A

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Not for Publication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

VACATED

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

Mary Wisdom, Pinal County Public Defender
By Lisa M. Surhio — Florence
Attorneys for Appellant

H O W A R D, Chief 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 combined inpatient and outpatient treatment for a period not to exceed one year, including inpatient treatment limited to 180 days. *See* § 36-540(A)(2), (F)(3). Because the trial court ruled without having before it a written treatment plan that complied with the statutory requirements set forth in A.R.S. §§ 36-535(B), 36-540(C)(2), and 36-540.01(B), we vacate the order committing appellant for involuntary mental health treatment.

¶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 Sections 36-540 and 36-540.01 prescribe the conditions under which the trial court may order combined inpatient and outpatient treatment. Section 36-540 provides in pertinent part:

> C. The court may order the proposed patient to undergo . . . combined inpatient and outpatient treatment . . . if the court:
>
> . . . .
>
> 2. Is presented with and approves a written treatment plan that conforms with the requirements of § 36-540.01, subsection B. If the treatment plan presented to the court . . . provides for supervision of the patient under court order by a mental health agency that is other than the mental health agency that petitioned or requested the county attorney to petition the court for treatment . . . the treatment plan must be approved by the medical director of the mental health agency that will supervise the treatment pursuant to subsection E of this section.
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> . . . .
>
> E. If the court enters an order for treatment pursuant to subsection A . . . all of the following apply:
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> 1. The court shall designate the medical director of the mental health treatment agency that will supervise and administer the patient's treatment program.
>
> 2. The medical director shall not use the services of any person, agency or organization to supervise a patient's outpatient treatment program unless the person, agency or organization has agreed to provide these services in the individual patient's case and unless the department has determined that the person, agency or organization is capable and competent to do so.

Section 36-540.01(B) provides:

> The order for conditional outpatient treatment issued by the medical director shall include a written outpatient treatment plan prepared by staff familiar with the patient's case history and approved by the medical director. The plan shall include all of the following:
>
> . . . .
>
> 3. The name and address of any . . . agency . . . assigned to supervise an outpatient treatment plan or care for the patient, and the extent of authority of the . . . agency . . . carrying out the terms of the plan.
>
> 4. The conditions for continued outpatient treatment . . . as the medical director may specify.

¶4 In June 2009, the trial court granted a petition to evaluate appellant based on her history of mental disorder. Drs. Michael Vines and Stephen Borodkin, psychiatrists at the Superstition Mountain Mental Health Center, evaluated appellant, and Dr. Vines, the chief medical officer of that facility, filed a petition for COT on June 17, 2009. At the June 24, 2009 hearing, Dr. Vines testified that Corazon Behavioral Health Services (Corazon) would manage appellant's case and Pinal Hispanic Council (Pinal) would mange her medication. When the state presented the letter of intent (LOI) setting forth the statutorily required treatment plan, counsel for appellant, Lisa Surhio, raised the following objections to the proposed plan: (1) none of the nine items listed in the section entitled "Conditions for Continued Outpatient Treatment" had been circled; (2) the LOI, written on a form provided by Cenpatico Behavioral Health of Arizona, showed only Corazon, and not Pinal, as a

treating agency; (3) the signature line on the LOI intended for the "Agency Medical Director" had been left blank; and an individual named Julie Cheetham had placed her undated signature on the line designated for the "Case Manager/Clinical Liaison."

¶5 Based on the court's understanding that appellant would not be released from inpatient treatment for another week, the court ruled as follows:

> I'm going to accept this [letter of intent] provisionally with the understanding that [appellant] is not actually going to be released on that outpatient treatment plan. I understand the requirement is that at the hearing for court-ordered treatment there should be an outpatient treatment plan provided to the Court. I believe that has been substantially complied with, but I'm concerned that what I have does not have a signature of the agency['s] medical director.
>
> And we also had some information that there may be two agencies who are going to be overseeing outpatient treatment. And in that particular case, the Court would require ideally, upon release and beginning the outpatient treatment plan, that both of those be in place and both of these be documented for the court.
>
> So what I'm going to do is complete my rulings with regard to this hearing and then set this for review in seven days to make sure that that documentation and that paperwork is provided to the Court timely within the next seven days and before [appellant] is actually released to outpatient treatment.

¶6 Over Surhio's objection, the trial court found appellant to be "persistently or acutely disabled, in need of psychiatric treatment and . . . unable or unwilling to accept [treatment] voluntarily." The court also found no appropriate alternative to combined inpatient and outpatient treatment, established the time frame for treatment, and designated

Corazon as the agency to supervise the treatment. However, before the hearing concluded, the court set a review hearing to take place one week later and noted: "I have been presented with a written treatment plan and I have ordered supplemental information for that treatment plan, but I am going to order that you follow your prescribed treatment plan outpatient and inpatient treatment." The relevant minute entry shows the hearing ended at 11:45 a.m. on June 24, the same date and time the court's order for COT, from which appellant has appealed, was filed.

¶7 At the review hearing one week later, the state reminded the trial court that it had filed an amended LOI (the second LOI) regarding Corazon "before the end of th[e] judicial day" on June 24. The amended LOI reflected the following changes from the one originally filed: six of the nine conditions for continued outpatient treatment had been circled; a clinical director had signed on the line for the medical director (dated "6/23/09," the day before the June 24 hearing); and an attachment to the LOI showed that Corazon would be responsible for appellant's case management, while Pinal would monitor her medication. Also at the July 1 review hearing, the state presented the court with a third LOI, this time regarding Pinal.

¶8 At the review hearing, Surhio objected to the timeliness and completeness of the Pinal LOI and to the trial court's having ruled at the first hearing in the absence of an LOI signed by a medical director or evidence that a medical director had approved the plan. The court noted it had not found "any substantial difficulty with the information presented . . .

which verifies, validates there was an outpatient treatment plan in place for the time when [appellant] will be released and . . . with the supplementation today." The court then concluded:

> So I don't find anything which would undo the Court's [June 24] order or preclude the Court from being able to have made that order at the time it did. I am affirming the Court's order showing that all pertinent information is now in the Court file and to the extent there may have been a technicality missing from the Court file a week ago, the Court is persuaded that there's no reason to undo this order and it will be affirmed.

¶9 On appeal, appellant contends she was denied due process of law because the trial court did not have before it complete, written treatment plans from both Corazon and Pinal when it committed her to treatment and because there was no evidence that the original Corazon plan had been approved by its medical director. The court apparently found the submission of an LOI that complied with the statute after it had already entered its order committing appellant for involuntary mental health treatment was sufficient to cure any technical defect in the original LOI/treatment plan. We disagree. Section 36-540(C)(2) requires the supervising treatment agency, in this case, Corazon, to submit a written treatment plan that conforms with § 36-540.01(B). In turn, § 36-540.01(B)(4) requires that the written treatment plan include "[t]he conditions for continued outpatient treatment." That portion of the original treatment plan, the only treatment plan the court had before it when it committed appellant, had not been filled in, and thus did not conceivably conform with the statute. In addition, § 36-540.01(B)(3) requires the treatment plan contain information

identifying not only the supervising treatment agency (Corazon) but also any agency assigned to "care for" the patient (Pinal). The original LOI, again, the only treatment plan before the court when it ruled, did not mention Pinal.

¶10 Although the trial court granted the state an additional week to amend the original LOI, it nonetheless committed appellant to involuntary treatment at the June 24 hearing, specifically finding that "[t]he Court ha[d] been presented with a written treatment plan which conforms to the requirements of A.R.S. § 36-540.01(B)." The record simply does not support this finding. Moreover, by entering its final ruling at the conclusion of the June 24 hearing, before the state had filed the amended LOI later that day, the court committed appellant based on a noncompliant treatment plan and denied her the opportunity to respond to or challenge the amended LOI before it ruled. "Due process entitles a patient to a full and fair adversarial proceeding." *In re MH 2007-001275*, 219 Ariz. 216, ¶ 13, 196 P.3d 819, 823 (App. 2008).

¶11 When the trial court ruled, § 36-535(B) provided that the court "shall either release the proposed patient or order the hearing to be held within six days after the petition [for court-ordered treatment] is filed."[1] To the extent the court intended to cure the significant deficiencies in the original treatment plan presented at the June 24 hearing at the subsequent July 1 review hearing, that hearing, held more than six days after the petition for

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[1]Section 36-535(B) has since been amended to read as follows: "The court shall order the hearing to be held within six business days after the petition is filed." 2009 Ariz. Sess. Laws, ch. 153, § 4.

court-ordered treatment was filed on June 17, was untimely pursuant to § 36-535(B). *See In re Pima County Mental Health No. MH 863-4-83*, 145 Ariz. 284, 284, 700 P.2d 1384, 1384 (App. 1985) (Ariz. R. Civ. P. 6(a), providing that time is computed by excluding Saturdays, Sundays, and holidays, applies to § 36-535(B)). We previously have reminded the trial court that the case law in this area is abundantly clear that the commitment statutes must be construed strictly and followed carefully. Even a slight deviation from the procedures clearly specified in the statutes is impermissible. *See In re MH 2006-000023*, 214 Ariz. 246, ¶ 11, 150 P.3d 1267, 1270 (App. 2007).

¶12 Therefore, we vacate the court's June 24, 2009 order committing appellant for involuntary mental health treatment. *See In re Maxwell*, 146 Ariz. 27, 30, 703 P.2d 574, 577 (App. 1985) (vacating order for involuntary treatment in absence of evidence showing court had been presented with and had approved statutorily required written treatment plan).

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JOSEPH W. HOWARD, Chief Judge

CONCURRING:

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PHILIP G. ESPINOSA, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge