

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE PIMA COUNTY MENTAL HEALTH No. MH20070979514

No. 2 CA-MH 2014-0003
Filed December 15, 2014

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NOT FOR PUBLICATION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); Ariz. R. Civ. App. P. 28(c).

Appeal from the Superior Court in Pima County
No. MH20070979514
The Honorable Peter W. Hochuli, Judge Pro Tempore

AFFIRMED

COUNSEL

Mental Health Defender's Office, Tucson
By Ann L. Bowerman
Counsel for Appellant

Barbara LaWall, Pima County Attorney
By Jonathan Pinkney-Baird, Deputy County Attorney, Tucson
Counsel for Appellee

MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 B.C. appeals from the trial court's signed minute entry finding her persistently or acutely disabled as a result of a mental disorder and ordering her to comply with a mental health treatment plan. She maintains the court erred in denying her motion to dismiss the petition. For the following reasons, we affirm the court's ruling.

Facts and Procedural History

¶2 On July 16, 2014, the supervisor of the mental health facility providing outpatient treatment to B.C. petitioned the trial court to order her to comply with an involuntary mental health evaluation. The petition alleged B.C. was persistently or acutely disabled as a result of a mental disorder, lacked "the ability to make clinical[ly] appropriate decisions for treatment," was "currently not taking medication as prescribed," was "reported to be taking medication not prescribed to her," and "has a history of over dosing on her medication due to non-med[ication] compliance." The court ordered B.C. detained for an evaluation, and the Pima County Attorney subsequently filed a petition requesting she receive court-ordered mental health treatment based on the same allegations.

¶3 At the hearing on the petition for court-ordered treatment, the trial court denied B.C.'s motion, through counsel, to dismiss the petition on the ground the petitioner had failed to present the testimony of "two or more witnesses acquainted with the patient at the time of the alleged mental disorder," as required by A.R.S. § 36-539(B). After B.C. testified, the court granted the petition for involuntary treatment, finding, by clear and convincing evidence, that B.C. "is as a result of a mental disorder persistently or

IN RE PIMA COUNTY MENTAL HEALTH NO. MH20070979514
Decision of the Court

acutely disabled and in need of a period of mental health treatment,” but, “at the present time . . . is unable or unwilling to comply with treatment on a voluntary basis without a court order.” We have jurisdiction over B.C.’s timely appeal pursuant to A.R.S. §§ 12-2101(A)(1) and 36-546.01.

Discussion

¶4 As the sole issue on appeal, B.C. contends the trial court erred in denying her motion to dismiss. We uphold an order for treatment unless it is “clearly erroneous or unsupported by any credible evidence.” *In re Mental Health Case No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995). But “[b]ecause involuntary treatment proceedings may result in a serious deprivation of appellant’s liberty interests, statutory requirements must be strictly met,” and “[q]uestions of statutory interpretation . . . are reviewed de novo.” *In re Maricopa Cnty. Superior Court No. MN 2001-001139*, 203 Ariz. 351, ¶ 8, 54 P.3d 380, 382 (App. 2002).

¶5 At issue here is the statutory requirement that evidence at a hearing for involuntary mental health treatment “presented by the petitioner or the patient shall include the testimony of two or more witnesses acquainted with the patient at the time of the alleged mental disorder, . . . and testimony of the two physicians who participated in the evaluation of the patient.” § 36-539(B). Our supreme court has inferred the purpose of requiring testimony from acquaintance witnesses is to prevent the “rubber stamping” of the physicians’ evaluations and “to give the trial court an opportunity to determine how the patient behaves in situations other than commitment evaluation interviews.” *In re Coconino County No. MH 1425*, 181 Ariz. 290, 292, 889 P.2d 1088, 1090 (1995); *see also In re Pima County No. MH 862-16-84*, 143 Ariz. 338, 340, 693 P.2d 993, 995 (App. 1984) (“The function of the two [acquaintance] witnesses [is] to attest to the general demeanor of the proposed patient.”).

¶6 B.C. does not dispute that the state’s first “acquaintance” witness, Tamera P., “had relevant, personal knowledge” of B.C. and “qualified as a witness acquainted with [her] at the time of the alleged mental disorder.” But she argues that

IN RE PIMA COUNTY MENTAL HEALTH NO. MH20070979514
Decision of the Court

neither Sarah L. nor Janet H., also called by the petitioner, were qualified to testify as the second “witness[] acquainted with the patient at the time of the alleged mental disorder.” § 36-539(B).

¶7 After Sarah L. testified she had been B.C.’s case manager for a period of about three weeks but had never met her or spoken with her, and she could testify only on the basis of what she had read in B.C.’s records, the county attorney expressed concerns about her qualification as an acquaintance witness.

¶8 He then called Janet H., a mental health technician at the evaluating facility, who testified she had seen B.C. “on the unit . . . maybe three or four times a week” and had “observed she is always [cooperative].” She stated she had “never heard any outbursts or any bizarre behavior or uncooperativeness[,] and her hygiene has always . . . been good,” adding that B.C. “is always neat and I haven’t observed really any negative or undesirable behavior.” She also testified she had seen other patients who “are responding to internal stimulation,” such as auditory hallucinations, but had never noticed B.C. exhibiting such behavior.

¶9 We cannot agree with B.C.’s assertion that Janet did “not qualify as a ‘witness acquainted with the patient at the time of the mental disorder’” because she “did not see any evidence of a mental disorder,” and, as a result, her “testimony [was] not relevant to the issue of whether [B.C.] has a mental disorder.” Although her testimony may not have been favorable to the petitioner’s case, we see nothing in the statute requiring that a petitioner must prove his case through the testimony of acquaintance witnesses; as the county attorney points out, the statute requires only that the court consider such evidence, whether “presented by the petitioner or the patient.” § 36-539(B). And, as this court has noted, medical personnel may be “more enlightened than the average person regarding hospitalization and treatment for mental disorders” when appearing as acquaintance witnesses. *Pima Cnty. No. MH 862-16-84*, 143 Ariz. at 340, 693 P.2d at 995. We find no error in the court’s receiving this testimony regarding “the general demeanor of the proposed patient,” *id.*, as meeting the requirement of acquaintance testimony under § 36-539(B).

IN RE PIMA COUNTY MENTAL HEALTH NO. MH20070979514
Decision of the Court

Disposition

¶10 The trial court's ruling is supported by substantial evidence, and B.C. has provided no basis to conclude the court erred in applying the law. Accordingly, the court's order of involuntary treatment and its treatment plan are affirmed.