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AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN THE MATTER OF RANDY L.

No. 1 CA-MH 16-0005 SP
FILED 8-30-2016

Appeal from the Superior Court in Mohave County
No. S8015CV201000859
The Honorable Lee Frank Jantzen, Judge

VACATED AND REMANDED

COUNSEL

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By Gregory D. Honig, Louis Caputo, Aubrey Joy Corcoran
*Counsel for Arizona Department of Health Services/Arizona Community
Protection and Treatment Center*

Mohave County Attorney's Office, Kingman
By Jacob Cote
Counsel for State of Arizona

Mohave Legal Defender's Office, Kingman
By Eric Devany
Counsel for Randy L.

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Margaret H. Downie and Judge Jon W. Thompson joined.

T H U M M A, Judge:

¶1 The State of Arizona appeals from an order discharging Randy L. from the Arizona Community Protection and Treatment Center (ACPTC), arguing the superior court applied an incorrect legal standard. Because the record does not reflect the findings required for such an order, the order is vacated and this matter is remanded for further proceedings consistent with this decision.

FACTS AND PROCEDURAL HISTORY

¶2 Randy was convicted of two sexually violent offenses: (1) aggravated assault in 1998, for which Randy was sentenced to one year in prison; and (2) attempted sexual conduct with a minor in 2004, for which Randy was sentenced to seven years in prison. After Randy was released from prison in 2011, the State petitioned to confine him as a sexually violent person (SVP) pursuant to Arizona Revised Statutes (A.R.S.) § 36-3701(7) (2016).¹ Randy and the State stipulated Randy was a SVP, and in January 2011, the court found he was a SVP and ordered his confinement at ACPTC.

¶3 ACPTC issued annual reports on Randy's treatment and status, as well as annual notices of Randy's right to petition for discharge. From 2011 to 2014, Randy filed two petitions for discharge. *See* A.R.S. § 36-3714. Each petition was denied.

¶4 Randy filed a third petition for discharge in March 2015. This third petition noted that no annual report had yet been prepared, that evaluations "for the past 2 years" by Dr. Richard M. Samuels indicated Randy did not meet the standards or criteria for continued treatment and requested an evidentiary hearing. Dr. Nicole Huggins wrote Randy's annual progress review and risk assessment later that month, indicating a need for ongoing secure and confined residential conditions. Dr. Huggins'

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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report was submitted to the court. Randy provided an expert report from Dr. Samuels and the State provided an expert report from Dr. Barry Morenz, opining Randy remained a SVP. The parties then agreed that an evidentiary hearing would not be necessary and that the court could rule on the petition after considering briefing, the reports and argument.

¶5 After considering the parties' filings, the reports and argument, the court granted Randy's petition. The two-page minute entry recognized that the "State has the burden of showing beyond a reasonable doubt that the Patient's mental disorder has not changed and that the Patient remains a danger to others." The minute entry added that "treatment should be goal-oriented with an end goal in sight" but that "[i]t is impossible for the Court to analyze this case properly without finding out what the plan is for ACPTC to comply with A.R.S. § 36-3707." The minute entry then concluded that the "current information and analysis is not sufficient to prove to the court beyond a reasonable doubt that the treatment plan in place is either working or not working. Without the additional information that the plan would provide, the Court is not firmly convinced that keeping the patient in treatment is appropriate."

¶6 Although denying the State's motion for reconsideration, the court granted the State's request for a stay pending appeal. This court continued the stay pending the resolution of the appeal. This court has jurisdiction over the State's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. § 12-2101(A)(1) and -120.21(A)(1).

DISCUSSION

¶7 When a SVP petitions for discharge, "[the] attorney for the state has the burden of proving beyond a reasonable doubt that the person's mental disorder has not changed and that the person remains a danger to others and is likely to engage in acts of sexual violence if discharged." A.R.S. § 36-3714(C). "If the state does not meet its burden of proof, the person shall be discharged from treatment." *Id.* This court reviews de novo whether the substantive law was correctly applied. *Trust v. Yuma County*, 205 Ariz. 272, 274 ¶ 7 (App. 2003).

¶8 The minute entry cites A.R.S. § 36-3714, discusses the evidence and concludes that "[t]he current information and analysis is not sufficient to prove to the Court beyond a reasonable doubt that the treatment plan in place is either working or not working." The State argues this is a misapplication of the law.

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¶9 Although whether “the treatment plan in place is either working or not” is important in assessing a petition filed under A.R.S. § 36-3714, it is not dispositive. The statutory inquiry is whether “the person has not changed and that the person remains a danger to others and is likely to engage in acts of sexual violence if discharged.” A.R.S. § 36-3714(C). The efficacy of the treatment plan does not answer whether a person remains a danger to others. A treatment plan may be working, but the patient may still be a danger to others. On the other hand, a patient may no longer be a danger to others notwithstanding an ineffective treatment plan. Here, the minute entry made no findings regarding whether Randy has changed, whether he remains a danger to others and whether he is likely to engage in acts of sexual violence if discharged. Accordingly, the minute entry’s conclusion that it was unclear whether the treatment was working did not properly apply the law.

¶10 On appeal, the parties extensively discuss reports from various doctors and experts. This discussion is entirely proper for the finder of fact to consider. The legal question on appeal, however, is whether the record shows that the correct legal standard was applied. For the reasons noted above, the record on appeal does not show that the correct legal standard was applied. On remand, the superior court will have the opportunity to consider all relevant evidence in applying the correct legal standard set forth in A.R.S. § 36-3714.

CONCLUSION

¶11 The order granting Randy’s petition for discharge from ACPTC is vacated and this matter is remanded for further proceedings consistent with this decision.



Amy M. Wood • Clerk of the court
FILED: AA