



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**IN THE MATTER OF MARICOPA COUNTY SUPERIOR COURT
NO. MH 2008-000867
CV-09-0297-PR**

PARTIES AND COUNSEL:

Petitioner: The State of Arizona, represented by Deputy Maricopa County Attorneys Anne C. Longo and Geraldine Roll.

Respondent: B.B., represented by Deputy Maricopa County Public Defender Tennie B. Martin.

FACTS:

Respondent was hospitalized at the Arizona Heart Institute/Phoenix Children's Hospital in 2006 for a heart condition, an allergic reaction, and possible schizophrenia. When he was released, he went to a Banner Health facility for behavioral-health follow-up, but he and his mother ("Mother") left before he could be evaluated.

On April 21, 2008, Dr. L. filed a Petition for Court-Ordered Evaluation of Respondent. Dr. L. stated that although Respondent did not believe he needed mental health treatment, Dr. L. believed Respondent to be "paranoid and markedly delusional." Dr. L. averred that there was reasonable cause to believe Respondent had a mental disorder, and as a result, was a danger to himself and others, particularly Mother. Dr. L. noted that Respondent threatened to kill Mother and "displays manic symptoms."

Mother completed an accompanying Application for Involuntary Evaluation and Application for Emergency Admission for Evaluation. She stated that Respondent was delusional and paranoid and thought the Mexican Mafia was threatening to cut off his fingers and then kill him. She stated Respondent carried a gun and told her he would be "better off dead" and wanted to "go out with a bang."

On April 24, 2008, Dr. H. filed a Petition for Court-Ordered Treatment, stating that Respondent was a danger to himself and others and was persistently or acutely disabled. In an accompanying affidavit, Dr. H. stated that he examined Respondent, then 21 years old, and arrived at a probable diagnosis of mood disorder, not otherwise specified. Respondent told Dr. H. that his suicidal statements to his Mother were exaggerations. Respondent also told Dr. H. that although he had a "hyper" personality, he did not believe he was mentally ill or needed psychiatric medications. Respondent showed "no evidence of delusional thinking during the interview." Nevertheless, Dr. H. concluded Respondent required involuntary inpatient hospitalization "to ensure that he is compliant with recommended medications, to ensure that he

does not harm himself or others, and to ensure that his psychiatric symptoms stabilize before he would be safe to be discharged back into the community.”

In a second attached affidavit, Dr. F. stated he examined Respondent and diagnosed him with mood disorder, polysubstance dependence, and cannabis abuse. In his interview with Dr. F., Respondent acknowledged he was concerned about the Mexican Mafia. Respondent told Dr. F. he self-medicates with marijuana when under stress. Dr. F. concluded that Respondent’s “insight and judgment are impaired.” He stated that Respondent’s symptoms “appear to be acutely disabling.”

An involuntary commitment hearing was held on April 30, 2008, on the Petition for Court-Ordered Treatment. S.M., a woman who once dated Respondent, testified that she still saw Respondent occasionally and he never threatened her. She stated she never saw him do anything that would make her concerned he was a danger to himself or others. Similarly, I.C., a roommate/tenant of Respondent, testified that although Respondent’s behavior recently had become “very erratic, and he seemed like he was aggressive,” he had not seen Respondent do anything he thought represented a danger to himself.

On the other hand, Mother testified Respondent recently had been having “manic episodes” that frightened and alarmed her. She said Respondent told her “numerous times [that] he [did not] care if he died.”

Dr. H. testified he evaluated Respondent and noticed symptoms of bipolar disorder. He testified Respondent admitted experiencing symptoms of confusion but attributed it to coming off cocaine. Dr. H. stated that since his initial evaluation, he had spent additional time with Respondent and revised his diagnosis from mood disorder, not otherwise specified, to bipolar disorder, manic phase.

Dr. F. testified telephonically. At the outset, Respondent’s counsel objected and requested Dr. F. be asked to appear in person. Dr. F. told the court that he was, at the moment, attending a mandatory resident training program at the Phoenix campus of the University of Arizona. Respondent’s counsel argued that Respondent had “a right of confrontation, to see the witness, to see how he behaves here in court, and he believes that’s crucial to the Court to see that also.” Counsel for the State argued that he was not provided with sufficient advance notice that Respondent wanted Dr. F. to testify in person: “[T]here are times, and especially for residents, where they have training that sets up this, these conflicts. . . . We did not have enough notice to produce Dr. [F.], and to resolve this conflict.” The court denied Respondent’s request that Dr. F. be required to appear in person in court without making any factual findings regarding Dr. F.’s availability.

Dr. F. testified that when he initially interviewed Respondent, he observed “symptoms of mania.” He testified that his diagnosis of Respondent evolved from mood disorder to probable bipolar disorder. On cross-examination, Dr. F. acknowledged that Respondent’s stress, difficulty sleeping and irritability could be a reaction to being held in a hospital against his will. Also,

there were questions posed to Dr. F. that he could not answer because he did not have his affidavit or Respondent's medical records with him.

Respondent testified he told Mother the Mexican Mafia was after him and was going to cut off his fingers because he wanted her to give him money, not because it was true. He testified he never said he would be better off dead and did not want to die, adding, "I actually like my life. . . . I do feel that I have the potential to make a lot of money and be a successful individual." He testified he told Mother he was not afraid to die because he believed that when he dies, he will go to Heaven and be with his deceased stepfather, with whom he was very close.

The court found by clear and convincing evidence that Respondent was suffering from a mental disorder and, as a result, was "persistently or acutely disabled." The court ordered treatment for a period not to exceed 365 days, including inpatient treatment for not more than 180 days. Respondent timely appealed.

In an opinion filed July 30, 2009, the court of appeals vacated the trial court's order committing Respondent for involuntary mental health treatment. Although the commitment order had expired, the court decided this matter under an exception to the mootness doctrine. Specifically, the court held that "the trial court committed reversible error by allowing one of two testifying doctors to appeal telephonically when the doctor was present in the greater metropolitan area in which the hearing occurred and the State failed to demonstrate the doctor was truly unavailable to appear in person." Op. ¶ 1.

On October 14, 2009, the State filed its petition for review in this Court. On December 31, 2009, Respondent filed his response.

ISSUE:

In reviewing a trial court's order allowing telephonic testimony of an evaluating doctor, did the Opinion err in creating a prerequisite for such telephonic testimony not found in Arizona Rules of Civil Procedure or in the statutes, and contrary to the disclosure rules promulgated by the Arizona Supreme Court?

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