



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**IN RE PIMA COUNTY MENTAL HEALTH NO. 20200860221
CV-22-0057-PR**

PARTIES:

Petitioner: Banner University Medical Center – South Campus
Respondent: G.B.
Amicus Curiae: Carol Olson, MD, DFAPA

FACTS:

Banner University Medical Center – South Campus (“Banner”) filed a petition for court-ordered treatment of G.B., alleging that she was persistently or acutely disabled (“PAD”) and requesting combined inpatient and outpatient treatment. In support of the petition, Banner submitted documentation from two psychiatrists who evaluated G.B., as required by A.R.S. § 36-533(B). The documentation for each psychiatrist consisted of the following: (1) a generic, boilerplate “Physician’s Affidavit”; (2) a generic form entitled “Addendum No. 1 – Persistently or Acutely Disabled,” which was attached to the affidavit; and (3) a “Final Report” attached to the addendum.

The trial court held a hearing on the petition. At the conclusion of the hearing, the trial court found by clear and convincing evidence that as a result of a mental disorder, G.B. was PAD and in need of a period of mental health treatment. The court ordered that G.B. receive treatment for “one year with the ability to be re-hospitalized, should the need arise, in an inpatient psychiatric facility for a time period not to exceed 180 days.”

The court of appeals vacated the trial court’s involuntary treatment order in a 2-1 opinion. The majority noted that the liberty interests at stake in involuntary treatment proceedings compel strict statutory compliance. The majority found that the affidavits from G.B.’s psychiatrists did not strictly comply with § 36-533(B) because they were almost entirely conclusory in nature, did not describe in detail the behavior that indicates that G.B. has PAD, and did not include a summary of the facts that support the allegations of the petition. The majority determined that the addenda attached to both affidavits were similarly conclusory and standardized, consisting only of pre-printed forms containing questions related to PAD status with spaces for answers. The majority further found that in the context of § 36-533(B), written reports cannot simply accompany an affidavit; rather, the affidavit itself must describe in detail the alleged PAD behavior and include a summary of the requisite factual basis and relevant examination results.

The dissent agreed that involuntary treatment raises substantial liberty interests warranting strict statutory compliance. Unlike the majority, however, the dissent found that the affidavits, addenda, reports, and testimony presented at the hearing amounted to overwhelming evidence that complied with the purpose, intent, and requirements of § 36-533(B). The dissent noted that the underlying purpose of the statute is to ensure competent evidence of individualized assessments based on detailed professional examinations, data, and conclusions. According to the dissent, the affidavits should not be viewed in a vacuum because supplementation may cure a defective affidavit. The

dissent further noted that G.B. did not challenge the affidavits in the trial court and that, if she had done so, alleged deficiencies in the statutory process could have been addressed and corrected.

ISSUE:

Does a physician affidavit submitted in connection with a petition for court-ordered treatment comply with the requirements set forth in A.R.S. § 36-533(B) where the required information is not contained in the affidavit but is instead contained in an attached written report or addendum that is not expressly referenced in the affidavit?

STATUTE:

A.R.S. § 36-533 states in pertinent part as follows:

A. The petition for court-ordered treatment shall allege:

1. That the patient is in need of a period of treatment because the patient, as a result of mental disorder, is a danger to self or to others or has a persistent or acute disability or a grave disability.
2. The treatment alternatives that are appropriate or available.
3. That the patient is unwilling to accept or incapable of accepting treatment voluntarily.

B. The petition shall be accompanied by the affidavits of the two physicians who participated in the evaluation and by the affidavit of the applicant for the evaluation, if any. The affidavits of the physicians shall describe in detail the behavior that indicates that the person, as a result of mental disorder, is a danger to self or to others or has a persistent or acute disability or a grave disability and shall be based on the physician's observations of the patient and the physician's study of information about the patient. A summary of the facts that support the allegations of the petition shall be included. The affidavit shall also include any of the results of the physical examination of the patient if relevant to the patient's psychiatric condition.

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