

**THE HIGH COURT
WARDS OF COURT**

[2021] IEHC 616
RECORD NO. WOC/2602

**IN THE MATTER OF
MR.SOM
A WARD OF COURT**

JUDGMENT of Ms. Justice Niamh Hyland delivered on 4 August 2021

Introduction

1. This is an application by the HSE brought by way of notice of motion of 22 July 2021 seeking *inter alia* the following reliefs in respect of Mr.SOM, a ward of court:
 - a. An order approving the bespoke service package proposed by the Brothers of Charity in its draft proposal dated 23 April 2021 and its proposed adult's residential personal plan dated 19 July 2021 as being in the best interest of Mr.SOM, a ward of court.
 - b. An order permitting Mr.SOM to transfer from his current residence at Cork Autism Association, Co. Cork to a residence being renovated for him at the Brothers of Charity, Lota, Lower Glanmire Road, Glanmire, Co Cork based on the bespoke service package proposed by the Brothers of Charity in its draft proposal dated 23 April 2021 and its proposed adult's residential personal plan dated 19 July 2021.
 - c. An order providing for directions to facilitate the transfer of Mr.SOM to Lota, Lower Glanmire Road, Glanmire, Co Cork to ensure that his best interests are promoted and protected.

Reliefs proposed by Committee of the Ward

2. The Committee of the ward is Mrs.MOM, Mr.SOM's mother, who attended at the hearing on both days. On 28 July 2021, the second day of the hearing in relation to the proposed placement, which had been opposed by the Committee up until then, it was indicated by counsel for the Committee that the Committee was consenting to the proposed placement, albeit reluctantly, in circumstances where she believed there was no other alternative and where Mr.SOM's current placement is unsuitable and putting him at risk. The Committee put forward an alternative suggested draft order in those circumstances. The draft order sought a very extensive set of reliefs, running to seven pages. I do not propose to set all of the reliefs sought in this judgment, but I will identify the first two orders proposed as they cover similar ground to those proposed by the HSE.

- (1) An Order approving in principle that Mr.SOM will
 - (a) transfer from his current residence at Cork Autism Association, Co Cork to an apartment, for his sole use as residence, being renovated for him at the Brothers of Charity, Lota, Lower Glanmire Road, Glanmire, Co. Cork;
 - (b) receive from the Brothers of Charity his residential care at Lota and day care at B.C, Cork;

- (c) receive such care in accordance with an individualised, bespoke care package as described in the documents and oral evidence placed before the court at hearing on 21 and 28 July 2021.
- (2) An order adjourning final approval of the matters approved in principle above pending compliance with the orders set out below.
- 3. There follows draft orders in relation to a trauma plan, orders in respect of the transition, orders in respect of the preparation of a care package (which require an exhaustive listing of the matters to be contained within the care package, including a description of the membership and role of the multi-disciplinary team), orders in respect of governance provisions, orders directing the retention of external experts to provide Lota care staff with autism specific training, the appointment of a person to provide external oversight, as well as an order directing an annual report in relation to Mr.SOM's readiness to move to a residence in a community rather than a campus.

Nature of the Court's jurisdiction

- 4. Before identifying the orders that I believe appropriate, it is important to recall the nature of the Court's jurisdiction in any application in relation to a ward of court. That jurisdiction is to consider the best interests of the ward and to make decisions accordingly. Not all decisions in relation to the day-to-day life of a ward will be made by the Court, including when the ward is being cared for in a residential setting. Rather, the Court becomes involved when significant decisions are being made, often decisions in principle, that will affect the life of the ward in a substantial way. On the other hand, the Court should not be called upon to micro manage the life of the ward by providing detailed directions in respect of every aspect of the ward's life to the persons providing the care. That would not be justified by the best interests test and runs the risk of a Court giving directions on matters outside its area of expertise.
- 5. In an application for directions as to a residential placement, such as the current one, what the Court is considering is whether the proposed placement is in the best interests of the ward. Where the ward is already in a residential placement, as is the current situation, it will be necessary to compare the ward's existing situation with that which is proposed. The Court is concerned with the overall decision as to whether to make a move or not. The Court is not and should not be, involved in prescribing each and every detail of the manner in which the ward is to be moved or the detailed conditions that will prevail when the ward is *in situ*. That is a matter for the service provider.
- 6. Of course, the Court will require a substantial amount of information to decide whether the move should be made. Having heard evidence (if an oral hearing is required), the Court must decide whether, based on the evidence before it, the proposed move is suitable. Naturally that decision may require the Court to grapple with certain aspects of the proposed care, as that will feed into the decision as to suitability. Equally, it is appropriate for the Order to record the basis upon which the proposed move has been put before the Court and to approve the move on that basis. Where a Court views an issue as being of significant concern to a ward, then it is appropriate for the Order approving the

move to include directions in relation to that matter or to make the move conditional on a particular set of directions.

7. However, it is important to understand that this scrutiny is taking place in a context where the Court is deciding whether to approve the transfer or not: it is not a review *in abstracto* of the proposed care and contested approval hearings should not be used for this purpose.

Past relationship between the parties

8. I make the above observations because many of the very extensive orders sought by the Committee were described as “descriptive” orders, and it was stated that the necessity for them was so that there would be a record of the detail being proposed by the HSE, so that the HSE could be called to account if same was not provided. The context in which these submissions were made is that, unfortunately, there has been something of a breakdown in relations between the Committee and the HSE over a number of years. This is in circumstances where Mr.SOM’s current placement has become increasingly unsuitable for him over the last number of years and where the Committee believes that the HSE failed to take adequate steps, failed to move him and nonetheless assured the Court on various occasions that Mr.SOM was appropriately placed.
9. It is not necessary for me to decide those issues in circumstances where, happily, there is at least conditional agreement between the parties as to the proposed move. All parties now agree that Mr.SOM’s placement is quite unsuitable for him, has been for some time, and that he requires to be moved urgently, particularly given his health situation. It is vital that trust is rebuilt between the parties, since it is in Mr.SOM’s best interests that the Committee continue to be deeply involved in Mr.SOM’s care and welfare, as has been the case ever since Mr.SOM was born.
10. Mr.SOM is unfortunate in that he was born with various challenging health conditions, that have impacted upon his life; but he is fortunate in that he has an utterly committed family, in particular his mother Mrs.MOM, who has worked tirelessly for Mr.SOM throughout his life. He has also had a very committed legal team.
11. There will likely be aspects of Mr.SOM’s care over the next number of years upon which the Committee and the Brothers of Charity will have different views. In this respect, I am heartened by the fact that the Brothers of Charity have successfully provided a day service for Mr.SOM for many years and already know his needs.
12. But that does not mean the matter should be coming back before Court for those issues to be aired and resolved on each occasion, unless they are significant issues that affect Mr.SOM’s life in a fundamental way. In other words, issues of detail should not result in this matter coming back constantly before the wardship division of the High Court. I say this because this case has, in the last three years, been before the Court on more than 20 occasions and has taken up a disproportionate amount of Court time. That is perhaps understandable in circumstances where Mr.SOM was not appropriately placed and where there were real issues surrounding his care and welfare. However, I wish to make clear to

the parties that once Mr.SOM is appropriately placed in Lota – as I believe he will be - it is to be expected that the matter should only come back for review by the Court, in the usual way, perhaps once or twice a year.

Orders

13. In this case, I have been asked to approve the transfer on the basis of the bespoke service package proposed in the Brothers of Charity draft proposal of 23rd of April 2021 and the proposed residential personal plan of 19th of July 2021. I cannot do so on the basis of the proposal of 23 of April 2021, in circumstances where the HSE's own independent expert, Dr Sharma, indicated there was a paucity of detail in the plan and further detail required to be provided, and where the HSE consultant psychiatrist, Dr. Obousy, agreed with this view.
14. It is true that a great deal more detail was provided in the residential personal plan of 19 July 2021, and in the evidence that was provided to this Court over 2 full days of hearing at the end of July. Dr Obousy, who is employed by the HSE and in that context works with the Brothers of Charity, and who will be Mr.SOM's treating psychiatrist, gave extremely useful and important evidence about what is proposed for Mr.SOM.
15. She identified that it is vital that Mr.SOM has a group of core staff allocated to him and that that group are specifically trained in working with persons who have autism and an intellectual disability, as Mr.SOM does. It was also identified in evidence that Mr.SOM will have a bespoke service package, that he will have a full multidisciplinary team, some of whom have already been identified, that a detailed transition plan will be drawn up for Mr.SOM, that there will be a nurse on site in Lota (although at present not a nurse prescriber) and that Dr Obousy will be personally involved in Mr.SOM's care as his treating psychiatrist, as required.
16. I also heard evidence from Dr Sharma, the HSE expert who identified the insufficiency of the evidence from the Brothers of Charity in the proposal of 23rd of April 2021. He gave evidence that he had subsequently had a conversation with Miriam Tobin of the HSE who had filled in some of the gaps that he had identified, by reason of her discussions with Una Nagel of the Brothers of Charity. However, no additional documentation was identified in that respect.
17. The Committee was concerned with the lack of evidence from the Brothers of Charity and with what it described as the complete lack of detail in the proposed plan. The Committee had obtained an expert, Professor McDonnell, who provided written evidence to the Court. The main focus of his concerns were the lack of detail in the proposed plan, the absolute necessity for autism specific training for any staff working with Mr.SOM, his proposal that such training could be provided by his organisation, Studio 3, and his belief that Mr.SOM would be more adequately placed in a community setting rather than a campus setting, having regard to the policy of the HSE as set out in its document "Time to move on from congregated settings".

18. In that last respect, it was made clear to me that Professor McDonald thought that in Mr.SOM's case the lack of a move to a community setting could be acceptable, provided there was a constant consideration of the possibility of Mr.SOM moving to a campus setting, updated on a regular basis having regard to his progress.
19. I have come to the conclusion that I have enough information to conclude that the move is in Mr.SOM's best interests and that I should therefore approve the move in principle but that, given the evidence of both Dr. Sharma and Dr. Obousy, I do not have the type of fleshed out care plan that they are used to seeing prior to a move from one residential setting to another, and therefore I should withhold final approval until that plan is provided.
20. However, given the urgency of the move given Mr.SOM's health status and given the fact that his transition to Lota is expected to take about six months, it is important that planning for the move starts now.
21. I have also included an order that addresses the particular issue that concerned the Committee i.e. that Mr.SOM may not be able to move given his previous alleged negative experiences on the Lota campus when he received residential care there more than 20 years ago.
22. I turn now to explaining why I have not acceded to the application of the Committee in respect of specific categories of orders sought.
23. In relation to the transition plan, it is a matter for the HSE to formulate a transition plan and it is not necessary for the Court to get involved in the detail of that. I am satisfied from listening to the evidence of Dr Obousy that the HSE are in a position to formulate an appropriate transition plan, given her description of what will be required and her involvement in Mr.SOM's care.
24. In relation to the care package description sought by the Committee, I am satisfied that my Order at paragraph 1 below covers that issue. The terms of paragraph 1 were informed by the evidence of Dr Obousy, who described in her evidence what would be required in order to flesh out the details of a care package and what matters should be addressed therein. It would be quite inappropriate for me to make the type of orders sought by the Committee – for example requiring the MDT to meet at least monthly for the first year of Mr.SOM's residence in Lota and bi-monthly thereafter, and more frequently as the need arises. It is a matter for Mr.SOM's clinical team to decide when it is appropriate that MDT meetings should be held. I do not have the appropriate expertise to make that type of decision. Further, such decisions are at a level of detail that would normally exclude involvement by a Court exercising the wardship jurisdiction.
25. In relation to governance, I agree that it is important to have some type of external oversight of Mr.SOM's care, particularly given the unfortunate history of his previous care and its failure to meet his needs. What I propose is that Dr Sharma be retained by the Committee as an independent expert and in that context can provide a report to the Court

when the matter comes before the Court, as appropriate. This is a common approach in wardship cases and means that the Court has the benefit, through the Committee, of an expert review of care, separate from the body providing the care. Such an order will of course depend on Dr Sharma's willingness to act and availability. I therefore make no order at this point but can do so on 6 October if appropriate. If Dr. Sharma is not available, I request the parties to suggest an appropriate person and that that name be put forward at least one week prior to 6 October to the wards of court office.

26. In relation to the Order sought directing that Studio 3, the private provider run by Professor McDonnell, be retained to provide Lota residential care staff with training in various matters including behaviour management and understanding autism, I consider such an Order to be entirely inappropriate. First, its inclusion in the reliefs sought means that Professor McDonnell is not in fact an independent expert because he has a vested interest in the outcome of the proceedings, given that he provides training on a commercial basis. Second, no evidence was put forward by any independent expert on behalf of the Committee to demonstrate that the Brothers of Charity are not able to provide the type of training of staff that is required, despite their very extensive experience in this area (far greater than that of Studio 3) and their excellent record of caring for Mr.SOM in the day care setting. Finally, and most importantly, I am quite satisfied from the evidence of Dr Obousy that the Brothers of Charity are in a position to provide the requisite training for Mr.SOM. She described the necessity of ensuring that the core team has the credentials or are upscaled to have the credentials to deliver the bespoke service that has been described and confirmed that she was talking about carers with training in autism. She also confirmed that she was satisfied that the Brothers of Charity could provide Mr.SOM with the care he requires. Taken together, that evidence satisfies me there is no requirement for any external provider to become involved in training and that the Brothers of Charity can provide the necessary training.
27. Finally, in relation to Orders sought directing reports relating to Mr.SOM's possible move to residence in a community, I am satisfied that it is entirely premature to consider such a move at this point. The priority at present is to stabilise Mr.SOM's health in circumstances where I have heard evidence that he is at risk of possible seizures and heart attacks, leading to potential death. I have also heard a considerable amount of evidence over the last year in relation to various incidents involving Mr.SOM that persuade me that Mr.SOM is at present some considerable way from a community placement. These include Mr.SOM climbing in through the window of houses to steal food and refusing to leave, escaping onto a road while out on a walk and being at real risk of being hit by a vehicle, being found naked outside his house in very low temperatures, shredding his clothes and flushing them down the toilet, and other behaviours that derive both from his diagnosis, and also possibly from the deficits in his care.
28. Moreover, as Dr Sharma observes, there is a real benefit to Mr.SOM being on a campus where there are various professionals who will be immediately available to Mr.SOM. Most importantly of all, there is a nurse on the campus which, as Dr Obousy has emphasised, is of vital importance to Mr.SOM given his health. This would not be available to him in a

community setting. Given these unfortunate realities, it was difficult to understand the emphasis placed by the Committee on the necessity for a community placement at the hearing and the criticism of the HSE for placing him in a campus setting.

29. In the circumstances where the ultimate goal of the HSE for persons with disabilities is to be placed in a community setting as identified in the document "Time to move on from congregated settings", I do not rule out the possibility that Mr.SOM will ultimately be placed in such a setting. However, Mr.SOM is some considerable way from that situation at present for the reasons identified above. Accordingly, this possibility can be raised in the future when his situation has stabilised, and he is hopefully well settled in Lota.

Form of Order

30. In all the circumstances I will make the following orders:

- An order approving in principle the bespoke service package proposed by the Brothers of Charity, final approval to be provided on receipt of the complete care plan for Mr.SOM, to include a description of standardised outcome measures to be employed, such care plan to be provided within 8 weeks of the date of this judgment;
- An Order approving in principle the transfer of Mr.SOM from his current residence at Cork Autism Association, Co. Cork to a residence being renovated for him at the Brothers of Charity, Lota, Lower Glanmire Rd., Glanmire, Co. Cork, subject to final approval as per paragraph 1;
- An Order directing that transitional planning for Mr.SOM's transfer start immediately;
- An Order directing that an assessment be carried out on Mr.SOM's capacity to move to Lota, having regard to his past experiences there, and that a report on same be provided to the Court within 8 weeks of the date of this judgment.
- The matter to be listed on 6 October for mention only.
- Liberty to apply.