

**THE HIGH COURT**

**WARDS OF COURT**

[WOC 11066]

**IN RE A WARD: GENERAL SOLICITOR (MC)**

**RESPONDENT**

**Ex tempore ruling by Mr. Justice Mark Heslin delivered on 28<sup>th</sup> February 2024**

**Introduction**

1. This is an application about [MC] leaving wardship and she is very welcome to today's hearing. I understand that she is 'online', accompanied by staff and has been able to hear the entire of the application as moved by Ms. O'Dwyer on behalf of the General Solicitor's Office, to whom I am grateful. I also want to welcome [MC]'s good friend, [Ms. D], whom I see 'online' and she is very welcome also. During the ruling, I will refer to [MC] as the "respondent".

**Section 55 of the ADMCA 2015**

2. This is an application which, as Ms. O'Dwyer rightly points out, is brought under s. 55 of the Assisted Decision-Making Capacity Act 2015 (the "2015 Act"), the respondent being the relevant person under that Act.

**Declarations**

3. To explain for the benefit of the respondent and [Ms. D], the court's role today is to consider the evidence before it and to make one or more declarations in accordance with the 2015 Act, namely, that the respondent (i) does not lack capacity; or (ii) lacks capacity unless the assistance of a suitable person to act as a co-decision-maker can be made available; or (iii) lacks capacity even with the assistance of an appropriate co-decision-maker. If that third scenario is disclosed by the evidence, the court's role is to appoint a suitable decision-making representative, or "DMR".

**Facts**

4. Turning to the essential facts in this case, the respondent is a lady in her 80s and, according to the evidence, she has a diagnosis of Alzheimer's dementia. She was admitted to wardship on 13 January 2022 and the General Solicitor for Minors and Wards of Court is the committee of her person and estate in wardship.

5. The respondent currently resides at a certain residential care centre and the committee has brought the present application by way of a motion, which issued on 6 October last. That motion

(i.e. application), is based on a sworn document, an affidavit, provided by Ms. Linda Harney, solicitor. This affidavit sets out the respondent's personal details; diagnosis; and the relevant backdrop to her admission to wardship. It also refers to her current circumstances, the respondent being a widowed lady without children.

### **Correspondence**

6. In the manner explained by Ms. Harney at paras. 5-8 of her affidavit, correspondence relating to this application was sent to the respondent as well as to [Ms. CD], who is the clinical nurse manager of the Care Centre in question and to [Ms. D]. This communication included a 'reader-friendly leaflet' about leaving wardship. In the manner averred (i.e. sworn) by Ms. Harney, the applicant was informed that the respondent was simply unable to reply to this correspondence. Why this was the case emerges clearly from the evidence and I now turn to the medical evidence.

### **Capacity**

7. [Dr. H] is a consultant psychiatrist and he carried out an assessment of the respondent on 28 October of last year. In relation to the nature of the respondent's condition and her capacity to make decisions in specific areas, [Dr. H] states, *inter alia*, the following, in his report, which is dated 28 October 2023:-

*"[MC] has dementia which is a permanent evolving illness which will not improve."*

8. Under the heading of capacity, in particular "*Health, including care and treatment*", Dr. H states:-

*"[The respondent] is unable to understand relevant information, is unable to retain information, is unable to weigh information as part of a process of making a decision and is unable to communicate anything in a way including decisions."*

### **Functional assessment**

9. This is a 'functional' assessment of capacity in the manner required by the 2015 Act and it is evidence that the respondent fails all four elements of the functional capacity assessment in relation to the area of decision-making concerning health, care and treatment.

10. [Dr. H] came to the same view in relation to the respondent's capacity to make decisions in the areas of welfare, including supports required for the activities of daily living *and* in relation to property and financial decisions.

### **Section 55(b)(ii) of the 2015 Act**

11. This evidence speaks to the appropriateness of this Court making a declaration under s. 55(b)(ii) of the 2015 Act to the effect that the respondent lacks capacity to make decisions in relation to her health, her welfare, and her property and financial affairs *even with* the assistance of a co-decision-maker.

### **Discharge recommendations**

**12.** In relation to recommendations for discharge from wardship, [Dr. H's] view is that a DMR should be appointed for the respondent.

#### **Assets**

**13.** Returning to the grounding affidavit, from paras. 15-18, Ms. Harney makes averments in relation to the respondent's assets and these are detailed in a schedule which she exhibits. These include, among other things, certain monies in court; a UK weekly pension paid into a certain current account; a house in the east of the country; and certain rental income.

**14.** I also note the contents of Ms. Harney's supplemental affidavit, sworn on 26 February 2024, in relation to certain prize bonds and I have noted the contents of the amended schedule of assets exhibited.

**15.** In the manner in which Ms. O'Dwyer very helpfully submits, there is also a 'question mark' about whether there may be an account with 'NatWest' in the United Kingdom and Ms. O'Dwyer has explained that the committee has made enquiries in correspondence sent to NatWest but, unfortunately, has not received any response. I will presently come to the appropriate orders in that regard.

#### **DMR**

**16.** On the question of identifying a suitable DMR, this Court has the following evidence at paras. 19 and 20 of the affidavit of service sworn by Ms. Harney on 7 February 2024, and I quote:-

*"I say and believe that [the respondent] did not or could not express any will and preference. I say and believe [she] did not express any views as to who she would like to be her decision-making representative. I say that my opinion from my attendances with [the respondent] was that she had little or no understanding of the process despite my best explanations. I say and believe that [the respondent] did not understand the discharge from wardship process I was explaining to her. I say that [she] did not provide any material response to the notice of motion and grounding affidavit."*

#### **Views**

**17.** It is clear from a consideration of the entirety of the evidence before the court that every reasonable effort was made to engage with the respondent and to ascertain her views, including on the question of a suitable DMR. It is equally clear that due to her condition it was simply not possible for her to engage.

#### **No EPA**

**18.** As Ms. Harney avers, at para. 23 of her grounding affidavit, there is no enduring power of attorney or advanced healthcare directive known to exist.

#### **Nomination of DMR**

**19.** For very understandable reasons, namely, because she is a similar age to the respondent and does not reside near the respondent and given what is involved in the role, [Ms. D] felt unable to

take on the position of DMR. In that scenario, the nomination of [Ms. L] to act as DMR was approved by the President.

**20.** I want to say that that takes nothing away from [Mr. D's] care and concern for her friend, nor will the appointment of a DMR interfere in any way with [Ms. D's] ability to continue to visit her friend, the respondent. I also want to thank [Ms. D] very sincerely for her kindness and devotion to her friend, particularly given the respondent's vulnerabilities, and I have no doubt that Ms. D's visits are a great comfort to the respondent.

**21.** With regard to the qualifications and experience of [Ms. L], she is a qualified solicitor who advocates for persons with disabilities and a suitable person to act as DMR.

**22.** Drawing this ruling to a conclusion, I entirely agree with Ms. O'Dwyer's submission that the applicant's 'proofs' are in order and that the provisions of the relevant practice direction of this court have been complied with.

### **Declaration**

**23.** In light of the evidence which I have summarised, it is appropriate that this Court make the following declaration, namely, pursuant to s. 55(b)(ii) of the 2015 Act that the respondent lacks capacity to make decisions in respect of personal welfare and property and affairs, even if the assistance of a suitable co-decision-maker was made available to her.

### **Orders**

**24.** In terms of orders, the applicant has very helpfully provided a draft and to make orders in those terms is appropriate and reflects the evidence I have referred to.

**25.** In summary, and in addition to a s. 27 order which I made at the outset, the following orders are appropriate:-

- appointing [Ms. L] to act as the respondent's DMR;
- that the respondent be discharged from wardship pursuant to s. 55(5)(b) of the 2015 Act and remitted to the management of her affairs with the assistance of her DMR;
- that the DMR be entitled to receive a copy of the pleadings in this application;
- that the DMR is authorised to receive the respondent's various assets as detailed in the application;
- that the DMR is authorised to take all necessary steps to protect the respondent's assets or various property, as well as authorised to make investigations – that speaks to the submission made in relation to the possibility that there is an outstanding bank account as yet unidentified;
- that the DMR account to the Director of the Decision Support Service in accordance with s. 46(6) of the 2015;

- in accordance with ss. 42(1) and 42(2) of the 2015 Act, I will order that the DMR is not entitled to reimbursement of expenses or to payment out of the respondent's assets. That is to ensure that DMR is appropriately remunerated as a professional; and
- having regard to the age of the respondent and the nature of her condition, which is permanent in the manner [Dr. H] has explained, I also agree with the submission that it is appropriate to make orders, in accordance with s. 55A(1) of the 2015 Act, that the Circuit Court review the respondent's capacity no later than *three* years from the date of this order.

**26.** I am very grateful to the applicant who seeks no costs in relation to today's application.

**27.** That is the court's ruling and the reasons for it. Finally, I want to congratulate the respondent on exiting wardship and renew my thanks to [Ms. D] for her attendance today and for her ongoing care for the respondent.