

**THE HIGH COURT**

**WARDS OF COURT**

**[2024] IEHC 379**

**[WOC 9595]**

**IN THE MATTER OF E.K., A WARD OF COURT AND IN THE MATTER  
OF AN APPLICATION PURSUANT TO SECTION 55 OF THE ASSISTED  
DECISION-MAKING (CAPACITY) ACT 2015 (AS AMENDED)**

**RESPONDENT**

**Ex tempore ruling of Mr. Justice Mark Heslin delivered on 6<sup>th</sup> June 2024**

**1.** I am grateful to Ms O'D who moves today's application which is about [named] leaving wardship and during this ruling I will refer to [named] as "the respondent". She could not be more welcome, and I also want to acknowledge the presence of her granddaughter and her daughter, about whom the respondent spoke so positively.

**2.** This is an application brought under s.55 of the Assisted Decision-Making Capacity Act of 2015 ("the 2015 Act") and the respondent is the "relevant person" under that Act. The court has a job today, which is to consider all the evidence before it and then declare, in relation to areas of decision making, that either (i) the respondent does not lack capacity, or (ii) lacks capacity unless the assistance of a co-decisionmaker can be made available to her, or (iii) that she lacks capacity even if a co-decisionmaker is made available in which case a "DMR" (a decision making representative) would be appropriate to appoint.

**Certain facts**

**3.** For the purposes of the record, the facts in this case include that the respondent is a widowed lady, born in 1928, which plainly was not today or yesterday. According to the evidence, she has a diagnosis of Alzheimer's Dementia confirmed in 2017 but in the manner I will come to, the respondent is an extraordinary lady who retains an amount of decision making capacity, as the evidence will disclose. She was someone who was admitted to wardship in November 2019, and currently, the General Solicitor is her Committee. She is someone who lives alone in the family home, in circumstances where her late husband sadly passed away in 2006. She is someone reported to have all but one of her five children living locally, and she receives care from her granddaughter, who is in court today.

**The committee's application**

**4.** The Committee has brought the present application by way of a motion which issued on 18 October of last year and that motion is grounded upon a sworn affidavit prepared by Ms O'D, who moved today's application. It sets out the relevant background; the respondent's

reported diagnosis; her admission to wardship; her financial and living circumstances and also makes clear, in particular from para. 8 onwards, that correspondence regarding today's application was sent to the respondent and to all other relevant parties, including, her granddaughter, her three sons and her two daughters.

### **Medical evidence**

5. Of particular relevance today is the medical evidence before the court and, in that regard, I have the benefit of a report prepared by Dr C who is a Consultant Psychiatrist who carried out an assessment of the respondent on 1 December last at her home in the company of her granddaughter. In relation to the nature of the respondent's illness and her capacity in relation to decision-making in particular areas, Dr C's report of 6 February of this year puts matters as follows.

6. [The respondent] is a 95 year old widow who has an established diagnosis of dementia but who seemed to present well and managing as independently as possible with a number of set supports and carers in place. Dr C goes on to say that dementia is a permanent condition that affects someone's cognitive ability, reasoning and the retention of new memories. It gradually progresses over time rendering patients less able to make decisions for themselves. During assessment, [the respondent] demonstrated still a degree of independent decision-making particularly when supported.

7. The report from para. 10.3 to 10.5, inclusive, sets out what was obviously a functional capacity assessment and at para. 10.6 Dr C states:

*"Following [the respondent]'s assessment and the review of the information provided and collateral histories, it is my clinical opinion that [the respondent] was not able to demonstrate capacity for independent decision making in areas of complex matters related to welfare, healthcare, treatment and property and finances, mostly because of her deficits in her ability to weigh and balance information."*

### **Co-decision-maker**

8. However, [the respondent] did seem to retain some ability for less complex decision making and, in terms of recommendations for discharge from wardship, Dr C states the following:-

*"[The respondent] would likely benefit from a co-decision-maker to help and support her in the making of such more complex and relevant decisions regarding healthcare, welfare and finances."*

9. [The respondent] appeared to be benefitting from the care arrangements in place which to an extent also respect a degree of her will and preference. I would like to make reference to [the respondent]'s strong will, determination and wish to, despite her age, continue to function as independently as possible. It is also appropriate to note that in Dr C's report, she specifically states, and I quote:-

"[The respondent] *seemed to be well supported by the network of carers and [the respondent's granddaughter] for whom she showed genuine love and appreciation*".

**10.** It is appropriate to say again, for the record, that there is no medical evidence before the court which takes issue with any of the views expressed by Dr C.

**11.** From para. 29 of Ms O'D's affidavit she makes averments in relation to the assets of the respondent and these are also detailed in the Schedule exhibited to the application.

#### **Suitable co-decision-maker**

**12.** On the question of a suitable co-decisionmaker, I have evidence in the form of averments made, from paras. 18 to 26 inclusive of Ms O'D's 26 April affidavit. This includes the fact that one of the respondent's sons stated, among other things, and I now quote from para. 19:-

"[The respondent] *has complex relations with her children, and this has led to fractious relations with many opposing points of view, which may prove difficult for [the respondent] to navigate. I believe it would prove very beneficial for [the respondent] to be assigned an independent decision supporter to assist her.*"

**13.** Ms O'D goes on to make averments at para. 20 to the effect that, on 28 February of this year, the respondent informed her that she wants her granddaughter to be her co-decisionmaker, irrespective of the views of the rest of the family, that she loves [her granddaughter], and that [her granddaughter] does everything for her.

**14.** I also have the benefit of affidavits sworn by Mr I, solicitor, in relation to service of this application on the respondent on 23 May. Of particular note is the averment at para. 11 of Mr I's 28 May affidavit in which he swears that, on 23 May, the respondent expressed, as her will and preference, to enter into a decision making agreement with [the respondent's granddaughter] and for her to be her co-decisionmaker.

#### **Granddaughter**

**15.** Given the evidence I have just referred to, it is appropriate to make two points. First, this is a clear expression by the respondent of her wishes made earlier this month and a clear expression which is entirely consistent with the same wish expressed three months earlier by the respondent in February, namely, for [her granddaughter] to be appointed her co-decisionmaker. Second, the reason advanced by one of the respondent's sons for an independent person to be appointed, was described as complex relations with her *children*. However, there is simply no question of this Court preferring one of the respondent's children over another to act as co-decisionmaker. Rather, it is the respondent's granddaughter who is, according to the evidence entirely suitable to act as co-decisionmaker, consistent with the very clearly expressed wishes of the respondent.

### **Extraordinary lady**

**16.** In terms of evidence, I also have had regard to reporting by Mr B who met with the respondent on 18 September last, Mr B being an independent social worker retained by the applicant. In that report he very understandably describes the respondent as an extraordinary woman for her age and Ms O'D has referred to the contents of that report in her helpful submission.

**17.** I also note that, at para. 35 of her affidavit, Ms O'D avers that there is no Enduring Power of Attorney or Advanced Healthcare Directive known to exist.

### **Declaration**

**18.** To draw this Ruling to a conclusion, in light of the evidence, it is appropriate for the court to make a declaration pursuant to s.55(1)(b)(i) of the 2015 Act, the respondent lacks capacity in the areas of health, personal welfare and property and affairs unless the assistance of a suitable co-decisionmaker is made available to her.

### **Orders**

**19.** Turning to appropriate orders, the applicant has very helpfully provided a draft and to make orders in those terms is appropriate. In summary, the first order is, as I mentioned at the outset, an order under s.27 of the Civil Law Miscellaneous Provisions Act 2008 prohibiting publication which would, or would be likely to, identify the respondent.

**20.** The next order is to appoint [the respondent's granddaughter] as the respondent's co-decisionmaker and I am satisfied that this is what [the respondent] wishes and [the respondent's granddaughter] is entirely appropriate to carry out that role.

**21.** It is also appropriate to order that the respondent be discharged from wardship pursuant to s.55(3) subject to and upon the registration of a co-decision making agreement with the Decision Support Service or DSS as required by Part IV of the 2015 Act.

**22.** It is appropriate to order that the respondent's assets be returned to her on production of proof of the registration of the co-decision making agreement. That registration should be provided within three months. It is appropriate to order that the accountant of the Court of Justice carry out the directions in the payment schedule following production of the registration.

**23.** Given the evidence in relation to the respondent's age, the nature of her condition and her remarkable independence which continues, it seems appropriate to make an order pursuant to s.55A(1) of the 2015 Act that her capacity be reviewed no later than two years from the date of this Order. I am grateful to note that the applicant, the General Solicitor, is not seeking any costs in relation to today's application.

**24.** I want to congratulate [the respondent] on leaving wardship. She is no longer a ward of court and I wish her, and those who love her most, the very best for the future.