

THE HIGH COURT

WARDS OF COURT

[2024] IEHC 393

[WOC 4437]

IN THE MATTER OF R.B., 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 10th June 2024

1. This ruling must begin with a warm welcome to [the respondent], and I understand he has had to travel a considerable distance to be here today, so he is most welcome.

The court's role

2. This is an application about [the respondent] leaving wardship, and during this ruling I will refer to him as "the respondent". It is an application brought under the Assisted Decision-Making Capacity Act 2015 ("the 2015 Act") and section 55, in particular, applies. The respondent is the "relevant person" under that Act. The Court's role, today, involves considering the evidence before it and making a declaration or declarations and it has a choice to make, depending on the evidence, i.e. to declare that (i) the respondent does not lack capacity; or (ii) lacks capacity unless the assistance of a suitable co-decisionmaker can be made available to him; or (iii) lacks capacity even with the assistance of a suitable co-decisionmaker. That decision has to be made by the Court, depending on the evidence and in relation to the areas of decision making referred to in the 2015 Act.

The respondent

3. In this particular case, the respondent is a single gentleman in his 50s and he is reported to have a diagnosis of schizoaffective disorder. He is someone who was admitted to wardship in June of 2007 and, since July of 2019, the General Solicitor has performed the role as committee of his person and estate in wardship. The respondent lives in a certain group home in County [redacted] under the care of the HSE and he has resided there since 2021. By all accounts, he is very happy there and I will presently come to some specific evidence in relation to that.
4. The committee brought the present application by way of a motion which was issued on the 24th August 2023. That motion is based upon, or supported by, an affidavit - that is a sworn document - provided by Ms Fionnuala Burke of the General Solicitor's Office. This affidavit sets out the relevant backdrop, including the respondent's reported diagnosis, his admission to wardship, his living situation, his assets and his needs. It is sworn, or "averred to", that, in

terms of family, the respondent's parents are, sadly, deceased and he is said to have limited contact with his siblings.

Correspondence

5. In the manner averred by Ms Burke, correspondence concerning leaving wardship was sent to relevant parties, namely, the respondent himself as well as to Ms M, clinical nurse manager of his residential placement, and a letter to the respondent's sister. It is averred that there was no reply to that particular correspondence. The communication sent to the respondent included a "*reader-friendly leaflet about leaving wardship.*"

Medical evidence

6. Turning to the medical evidence before the Court, Dr C is a consultant psychiatrist and she carried out an assessment of the respondent as recently as the 26th January 2024. In relation to the respondent's capacity regarding decision-making in specific areas, Dr C states, among other things, the following in her report, which is dated the 19th February 2024.

Healthcare and treatment

7. As regards healthcare and treatment, the doctor states: "*While [the respondent] can clearly communicate his wants and decisions as regards healthcare and treatment, in this instance, his schizophrenia, he lacks the ability to understand, retain or weigh up the information relevant to those decisions.*"

Welfare and supports required for ADLs

8. In relation to decisions in the area of welfare and supports required for activities of daily living (or "ADLs") Dr C states: "*[the respondent] is essentially independent as regards activities of daily living, but currently resides in a protected and supportive environment where guidance, encouragement and assistance with such matters are readily available.*" Later, she offers the view that the respondent was "*unable to describe the various issues involved in self-care other than stating that all that was 'fine'.*"
9. She also reports that [the respondent] said "*sometimes you want to move and sometimes you do not.*" Her conclusion is that the respondent's communication of his decision as to how he might manage in a different setting was a statement that "*it would be all right*" and that he would be "*grand*", but was not reflective of any ability to understand, retain or weigh up the relevant information required.

Property and finances

10. On the third aspect of decision-making, namely in relation to property and finances, Dr C's view is that the respondent appears aware of his finances but only to a superficial degree and any retention of financial information was also superficial and, in her view "*he lacks the ability to understand and meaningfully retain and weigh up issues in relation to property and finances.*"

Discharge recommendation

11. In light of those views, Dr C's recommendation for discharge from wardship is in the following terms: *"I find that the ward lacks capacity, even where the assistance of a suitable person as a co-decisionmaker were made available to him."* That evidence which, in a manner I will explain, is uncontroverted, supports the making of a declaration under section 51(1)(b)(ii) of the 2015 Act.

Current care

12. It is important also to note that, in relation to the suitability of the respondent's current residence and the manner in which he is being treated and supported, Dr C states, among other things, the following: *"The atmosphere in the house was warm and welcoming and the relationship between [the respondent] and staff present that day appeared relaxed, positive, warm and supportive."* [The respondent] described himself as *"happy living here"* and also referred to attending a certain day unit five days each week. Dr C formed the impression that his current placement and the care he receives there are *"suitable and appropriate to his needs"*. I am very glad to note that and I want to thank all of those professionals involved in providing the respondent with such a warm and supportive atmosphere, contributing so much to the respondent's quality of life.

Service

13. In relation to service issues, it is clear from the evidence that the respondent was notified of Dr C's views and of her discharge recommendations and it was made clear to him that, should he wish, it was possible to obtain a second opinion. No such second opinion was sought by or on his behalf and no issue was taken with Dr C's views in any respect. Therefore, the medical evidence I have referred to is the state of the evidence and is uncontroverted.

Assets

14. Returning to Ms Burke's affidavit, from paragraph 16 to 19, she makes averments in relation to the respondent's various assets. They are detailed in a schedule which is exhibited and, in brief, they comprise of (i) disability allowance payments, (ii) certain funds held in Court and (iii) a certain balance in the committee account maintained by the General Solicitor's Office.

Choice of DMR

15. In relation to the identification of a suitable "DMR" (i.e. decision-making representative) I have had the benefit of a detailed affidavit sworn on the 23rd May 2024 by Ms A of the [redacted] Law Centre, who delivered papers, personally, to the respondent regarding this application and who explained the nature of it to him and ascertained his views during a meeting on the 21st of May, when the respondent was accompanied by the clinical nurse manager of his residence. What emerges is that the respondent's preference is for no family member to be involved in performing the role of DMR. Apart from suggesting individual members of staff employed in his current residential placement, which of course, speaks to how happy he is there, no other person was identified as a possible DMR.

Independent party

16. That is, of course, entirely consistent with averments made in Ms Burke's affidavit and I now refer to paragraph 12, in which she makes the following averment: *"On the 14th March 2024, I received a letter of the 6th March signed by [the respondent] and by [Ms K] and [Ms D] of his residential placement. This letter states: '[the respondent] has made the decision that he would like an independent advocate to support him as a decision-making representative. This letter was discussed with [the respondent] with support from his key worker, staff nurse [Ms D], and clinical nurse manager II [Ms K] of the residential house [the respondent] currently resides in.'"*

17. It is clear from the evidence that all service issues have been properly attended to and that every reasonable effort has been made both to explain the nature of today's application to the respondent and to ascertain his views in relation to it.

Independent social worker

18. As Ms Burke avers at paragraph 14 of her affidavit, the applicant also engaged an independent social worker, Ms G, who met with the respondent on the 19th and again on the 26th July 2023 and who prepared a detailed report, which is dated the 27th July. That report is exhibited and it is appropriate to quote briefly from it.

Current care

19. At paragraph 11, the independent social worker states, and I quote: *"It appears that [the respondent] is very happy in his current environment. Physically, he presents very well and it appears that he has all of his physical needs met in a timely manner. The environment in the group home is welcoming and relaxed. The property is well-maintained and [the respondent] has sufficient personal space for himself and his belongings. The writer observed [the respondent] interact with staff members in the placement and it appears that [the respondent] has established good relationships with staff and enjoys a lot of positive attention from them. [The respondent] enjoys singing and dancing and staff engage in this with him."* Speaking as someone who cannot sing and cannot dance, I want to congratulate [the respondent] on these talents and I hope that he enjoys singing and dancing with the staff who support him for many, many years to come.

Nomination of DMR

20. In circumstances where there was no suitable DMR identified by the respondent, the nomination of Ms H, a very experienced solicitor, to act as DMR was approved by the President. Having referred to the evidence which forms the basis for the Court's decisions, I now turn to those decisions.

Declaration

21. In light of the evidence, it is appropriate for the Court to make the following declaration. Pursuant to section 55(1)(b)(ii) of the 2015 Act, to declare that the respondent lacks capacity

to make decisions regarding health, personal welfare, and property and affairs even if the assistance of a suitable co-decision-maker is available to him.

Orders

22. In terms of orders, the applicant has very helpfully provided a draft and orders in those terms, subject to the following brief comments, are appropriate:

- An order under section 27 of the Civil Law (Miscellaneous Provisions) Act 2008, prohibiting publication which would or would be likely to identify the respondent as suffering from the condition referred to.
- An order appointing Ms H as the respondent's DMR in all areas covered by the 2015 Act.
- An order that the respondent be discharged from wardship under section 55(5)(b) and remitted to the management of his affairs with the assistance of his DMR, subject to the obligations set out in sections 8(7) and (8) of the 2015 Act. These sections require the DMR to encourage and facilitate input from the respondent, insofar as possible, and also entitle the DMR to consider the views of those caring for the respondent or having a bona fide interest in his welfare, and that includes healthcare professionals.
- It is appropriate to order that the DMR be entitled to receive a copy of the pleadings and papers in this application.
- An order that the Accountant of the Courts of Justice carry out the directions in the payment schedule.
- It is appropriate to order that the respondent be authorised to receive his various assets detailed in the application; and that the DMR account to the director of the Decision Support Service, the DSS, in accordance with section 46(6) of the 2015 Act.
- In accordance with sections 42(1) and (2) of the 2015 Act, the DMR, as a professional, is not entitled to reimbursement of expenses or to payment of remuneration out of the respondent's assets.
- Having regard to the evidence, including the view expressed by Dr C that the respondent's condition is lifelong, it is appropriate to make orders pursuant to section 55(A)(1) of the 2015 Act that the respondent's capacity be reviewed no later than three years from the date of today's order.

23. I am grateful to note that no order for costs is being sought, and that brings me to a final word, which is to congratulate [the respondent] on leaving wardship.

24. I know that it was a major concern of his to ensure that his money would be safe and the decisions made today will make sure that that is the case. And as well as congratulating him, I want to wish him the very best for the future and to, once again, express my thanks to all those professionals involved in providing support to him.