

# THE HIGH COURT

## WARDS OF COURT

[2024] IEHC 446

[WOC 3190]

### IN THE MATTER OF C.J., 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 21<sup>st</sup> June 2024

1. This is an application about [the respondent] leaving wardship. During today's ruling, I will refer to him as "the respondent". It is an application brought under s. 55 of the Assisted Decision-Making Capacity Act of 2015. The respondent is the "relevant person" under that Act, and I am very grateful to Ms. Duffy who moves today's application.

#### **The court's role**

2. The court's role, today, is to consider the evidence before it and then make a declaration depending on what the evidence allows for. The options in terms of declarations are: (i) to declare that a respondent does not lack capacity; or (ii) lacks capacity unless the assistance of a suitable person to act as co-decision-maker can be made available to them; or (iii) lacks capacity even with the assistance of a co-decision-maker. In that third scenario, it is appropriate for the court to appoint a decision-making representative or "DMR".

#### **Certain facts**

3. As to certain basic facts in the present case, the respondent is a gentleman aged 50 and unmarried. According to the evidence, he has a diagnosis of a moderate learning disability. He was admitted to wardship in July 2004 and the General Solicitor is committee of his person and estate. The respondent currently resides under a local authority tenancy in the care of a certain Care Association. The committee brought the present application by way of a motion, which issued on 7 November 2023. That motion was "grounded on" i.e. or based on a sworn document, i.e. an affidavit, provided by Ms. Christina Duffy, solicitor, who moves today's application in court. That affidavit sets out relevant information including the respondent's admission to wardship and his current circumstances. It is averred, among other things, that he has no children and that he has some contact with his brothers and other extended family members.

## **Notice**

**4.** In the manner which Ms. Duffy avers at paras. 6-10 of her grounding affidavit, correspondence regarding this application was sent to the respondent including a “*reader friendly leaflet about leaving wardship*”. Correspondence was also sent to the respondent’s three brothers, who are identified, and Ms. Duffy exhibits a copy of each of the letters sent to the respondent’s brothers on the 4 March. These letters explain the nature of today’s application and identified the three tiers in the new system under the 2015 Act, including the role of DMR. These three letters expressly invite views from the respondent’s brothers. Ms. Duffy avers at para. 10 of her grounding affidavit that, as of 8 May, no response was received to this correspondence.

## **Medical evidence**

**5.** Turning to the medical evidence before me today, I have the benefit of a report provided by Dr. C, who is a consultant psychiatrist. Dr. C met with the respondent and carried out an assessment on 17 December 2023. In relation to the nature of the respondent’s condition and his capacity to make decisions in certain areas, Dr. C states the following, among other things, in her 27 December report:-

*“[The respondent]’s moderate learning disability is a lifelong condition and therefore highly unlikely to improve.”*

## **Health**

**6.** Turning to the question of decisions relating to health, including care and treatment, Dr. C states, *inter alia*:-

*“[The respondent] was unable to demonstrate significant understanding of information and was unable to demonstrate the ability to retain, use, weigh or communicate this information.”*

**7.** She goes on to state that, despite this lack of capacity, [the respondent] willingly accepted support and encouragement from staff whenever he was required to visit the GP and reportedly responded well to their social stories type approach, although this support did not result in him regaining capacity to make healthcare decisions.

## **Welfare, property and finances**

**8.** In the manner explained in her detailed report, Dr. C came to this same view in relation to decisions concerning welfare, including supports required for activities of daily living or ADLs, and in relation to decisions concerning property and finances. She went on to state, among other things:-

*“On the basis of this assessment, it is my professional opinion that [the respondent] lacks the capacity to make decisions in the areas of healthcare, personal welfare, property and affairs. It is also my opinion that [the respondent] would continue to lack capacity to make decisions in these areas even if the assistance of a suitable person as co-decision-maker were made available to him.*

*My opinion is based on the fact that whilst [the respondent] appears to be very content with his day to day life and is extremely well supported by his carers, their presence enables him to regain a good level of function as distinct from enabling him to regain decision-making capacity. He is unlikely ever to regain decision-making capacity due to a lifelong moderate intellectual disability."*

### **Current care**

**9.** It is also very appropriate to take the opportunity to quote the following from the report by Dr. C:-

*"It was evident during the domiciliary assessment that [the respondent] was treated with dignity, kindness and respect by his care workers. A person-centred approach formed the basis of his carers' approach and [the respondent] was supported in achieving as much autonomy as possible in his daily routine."*

I want to acknowledge and thank all of those who have been providing such great care, support and assistance to the respondent.

### **Assets**

**10.** In relation to assets, Ms. Duffy makes averments at para. 13 of the grounding affidavit which detail these. The respondent's assets are also set out in a schedule, which she exhibits. In summary, these comprise of certain funds in court; certain funds in the respondent's committee account; and funds in a certain AIB account, with a disability allowance paid directly to him.

### **S. 8(7) and (8)**

**11.** Ms. Duffy avers at para. 18 that, in the present case, it would be appropriate to appoint a DMR to make decisions concerning the respondent's personal welfare and property and affairs, subject to the obligation set out in ss. 8(7) and (8) of the 2015 Act. It is important to note that those 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 or having a *bona fide* interest in the welfare of the respondent, including healthcare professionals.

### **Service**

**12.** I also have the benefit today of an affidavit sworn on 24 May of this year by Ms. R, of a certain law centre. It is clear from Ms. R's averments that service was effected, personally, on the respondent on 22 May. Ms. R also makes it averments to the effect that she explained the contents of the application and its implications to the respondent and its implications. As averred at para. 4 of her 24 May affidavit, when asked, if there was anyone he wished to act as his DMR, the respondent referred to one of his brothers.

## **DMR**

**13.** In an affidavit sworn on 11 June, Ms. R refers to a second meeting with the respondent, which took place on 7 June, where she explained the nature of the role of a DMR and advised the respondent that the General Solicitor's Office had written to his brothers concerning the application but had not heard back from them, and that includes, obviously, the brother mentioned. The respondent was asked if he had met his brother recently and said that he had not. He also mentioned a twin brother and, earlier, I referred to Ms. Duffy's averments concerning the correspondence sent to all three brothers in March, to which no reply was forthcoming. On this question, I also note the views expressed on 11 June 2024 by Ms. CS, a social worker with the Care Association, and those views weigh in favour of an independent person being appointed, even if there had been an expression of interest to act as DMR on the part of the family member in question. The state the evidence is that no such expression of interest has been made. Therefore, the position on the evidence is that no family member has indicated they are in a position to perform the role of DMR, nor has any trusted friend or other person been identified by the respondent. As I will presently come to, a nomination was made in this context.

### **Independent social worker**

**14.** Ms. Duffy also avers that the applicant engaged an independent social worker, Mr. B, who carried out an unannounced visit to the respondent on 3 October last. Mr. B prepared a report, having met with the respondent in his Day Centre and it is appropriate to quote certain findings by Mr. B as follows:-

*"He seems very happy and content in himself. He attends the day centre and seems to enjoy it very much. [The respondent] does a lot of activities including cooking, going for walks and art. He also helps the local Tidy Towns committee. Other activities he does include swimming, bowling, mini golf. He also enjoys country music and listens to Nathan Carter and Patrick Feeney. He knows what he does not like and will make it known to staff. He attends the advocacy group every Monday. I explained in as simple a fashion as possible to [the respondent] about the new legislation around assisted decision-making. He seemed relieved that nothing major was going to change with regard to his life."*

**15.** The conclusions which Mr. B, independent social worker, expresses include to say that the respondent seemed like "a very happy man", he seems "well supported and cared for" by the care association, and he seems "very well embedded in his community".

**16.** In light of that, I want to take the opportunity to say a few things. First, I want to reassure [the respondent] that what this Court decides today is not going to change his 'day to day' life and I hope that is of some comfort. Secondly, I want to congratulate [the respondent] for what appears to be a very full, rich, busy and fulfilling life, and, if I may say so, it is the life of a very active citizen.

### **Active citizen**

**17.** It is clear from the evidence that [the respondent] is a well-respected and very well-liked member of his community and it is also clear from the evidence that [the respondent] *gives* to his community. I want to thank him very sincerely for that. His work for the Tidy Towns speaks volumes about his commitment to his community and I want to acknowledge that very sincerely.

**18.** To conclude the evidence, Ms. Duffy avers at para. 19 of her grounding affidavit that there is no enduring power of attorney or advanced healthcare directive known to exist.

### **Nominations**

**19.** In circumstances where, as Ms. Duffy avers at para. 17 of her affidavit, there appears to be no suitable person willing or in a position to act as DMR, nominations were made and the nomination of Mr. O’C to act as DMR was approved by the President. Mr. O’C is an experienced solicitor with a particular expertise in representing vulnerable persons.

### **Declaration**

**20.** In light of the evidence, it is appropriate for this Court to make the following declaration, that is, pursuant to s. 55(1)(b)(ii) of the 2015 Act, to declare that the respondent lacks capacity to make decisions concerning his health and personal welfare, property and affairs, even if the assistance of a suitable co-decision-maker is available to him.

### **Orders**

**21.** In terms of orders, I am very grateful to Ms. Duffy who has furnished a draft. To make orders in terms of the draft is appropriate in light of the evidence I have summarised. To provide some clarity for the purposes of this ruling, those orders comprise of: -

- (1) 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;
- (2) An order appointing Mr. O’C as the respondent’s DMR in all three areas covered by the 2015 Act, namely health, personal welfare, and property and financial affairs;
- (3) An order discharging the respondent from wardship pursuant to **s.55(5)(b)** and remitting him to the management of his own affairs with the assistance of his DMR, subject to the obligations set out in **ss.8(7) and (8)** of the 2015 Act;
- (4) An order entitling the DMR to receive a copy of the pleadings and papers in this application;
- (5) An order that the Accountant of the Courts of Justice carry out the directions in the payment schedule;

- (6) An order that the respondent is entitled to receive the assets held on his behalf by the Accountant of the Court of Justice, and in the committee account maintained by the General Solicitor;
- (7) An order that the DMR is authorised to take custody and control and management of any assets held on the respondent's behalf in the AIB account referred to in the application;
- (8) An order that the DMR is to account to the director of the Decision Support Service in accordance with **s.46(6)** of the 2015 Act;
- (9) In accordance with **s.42(1) and (2)** of the same Act, the DMR is not entitled to reimbursement of expenses or to payment of remuneration out of the respondent's assets. That is appropriate given that the DMR is a professional from the panel;
- (10) In light of the evidence I have referred to, it is appropriate to make an order pursuant to **s.55A(1)** of the 2015 Act that the respondent's capacity be reviewed no later than three years from the date of this order.

**22.** I also note that the applicant is not seeking costs. Finally, I want to congratulate [the respondent] very sincerely on leaving wardship. I want to thank him for his efforts as such an active member of his community and wish him the very best for the future.