

THE HIGH COURT

WARDS OF COURT

[2024] IEHC 450

[WOC 9153]

**IN THE MATTER OF H.M., 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 28th June 2024

1. This is an application about [the respondent] leaving wardship. During this ruling I will refer to her as “the respondent”. This application is brought under s.55 of the Assisted Decision-Making Capacity Act 2015 (“the 2015 Act”) and the respondent is the “relevant person” under the 2015 Act.

2. The role of the court, today, having considered the evidence before it, is to make one or more declarations in relation to areas of decision-making.

3. The court, depending on the evidence, must declare that the respondent either: (i) does not lack capacity; or (ii) lacks capacity unless the assistance of a suitable person as co-decisionmaker can be made available; or (iii) lacks capacity even with such assistance from a co-decisionmaker. If the evidence supports a finding under that third heading, the court should appoint a decision-making representative (or “DMR”) in the relevant area, or areas, of decision-making.

Relevant facts

4. Turning to the facts in the present case, the respondent is a lady born in 1934. According to the evidence before the court, she has a diagnosis of chronic schizophrenia, as well as physical health issues, including atrial fibrillation and hypothyroidism. She is someone who was admitted to Wardship in October 2017 and the General Solicitor is her committee.

5. The respondent currently resides at a certain nursing home. She has lived there since February 2016.

6. The General Solicitor, as committee, brought the present application by way of a motion which issued in September 2023. That motion is grounded on an affidavit sworn by Ms Fionnuala Burke of the General Solicitor’s Office. Among other things, it is averred that the

respondent is a single lady with no children or immediate family. It is further averred that correspondence concerning today's application was sent to the respondent and that included a 'reader-friendly' leaflet about leaving wardship. Correspondence was also sent to the person in charge of the nursing home, Ms MC, and the relevant averments appear at paras. 5, 6 and 9 of Ms Burke's affidavit.

Medical evidence

7. Turning to the medical evidence, which is exhibited, Dr C is a Consultant Psychiatrist and she carried out an assessment of the respondent on 25 November 2023. In her report of the same date, Dr C states, *inter alia*, that:-

"[The respondent]'s medical conditions and serious mental illness are all severe and enduring in nature and it is highly unlikely that her symptoms of chronic schizophrenia will abate at this point in her life. As a result she is highly unlikely to develop the clarity of thought required to manage all of her decisions independently."

Health

8. Regarding decision-making capacity in relation to specific areas, Dr C offered the following view as regards decisions concerning health, including care and treatment:-

"[The respondent] was unable to demonstrate any understanding of the relevant information. She was similarly unable to demonstrate any ability to retain information relating to her medication, to use or weigh this information, or to communicate her understanding of it."

9. Later Dr C states that the respondent's acceptance of medication appears to be based on acquiescence, as opposed to true informed consent, as she did not have the capacity to provide such consent.

Welfare

10. Turning to decisions concerning welfare, including supports required for activities of daily living, Dr C notes in her report a disconnect between the supports which the respondent in fact requires, and the respondent's view that she did not need any such help.

11. Dr C also states, and I quote *"Following provision of information in relation to these activities of daily living and associated supports [the respondent] failed to demonstrate any understanding of the information and remained unable to retain, use, weigh or communicate the information relevant to these decisions."*

Property and finances

12. Looking at the third area of decision-making, namely, decisions relating to property and finances, Dr C reports, *inter alia*, the following:-

"[The respondent] was unable to identify the monetary value of her pension or to identify how she might access her money if she needed to purchase items, or how much these items might cost. When provided with information relating to where her money was located and how she could access it, [the respondent] was unable to demonstrate any understanding of this and was similarly unable to retain, use, weigh or communicate this information."

13. The reporting by Dr C comprises of a functional assessment of the respondent's capacity, under various aspects of decision-making, precisely in line with the approach in the 2015 Act.

Discharge recommendations

14. Dr. C states *inter alia* that [the respondent] would continue to lack capacity even if the assistance of a suitable person as a co-decisionmaker were made available to her and the respondent remains of the view that she does not require supports to make decisions. It is appropriate also to note that Dr C opines "*the respondent had no insight into her health conditions or her needs in the areas of health, welfare or finances*".

15. Speaking to the care which the respondent receives, Dr. C reports:-

"She reported being content in her current surroundings and did not express any desire to leave."

16. No issue has been taken with this medical evidence which, for the purposes of today's application, is uncontroverted.

S. 8(7) and (8) of the 2015 Act

17. At para. 20 of the grounding affidavit, Ms Burke avers that in the present case it would be appropriate for the appointment of a DMR in the areas of personal welfare, property and affairs but always subject to the obligations set out in s.8 (7) and (8) of the 2015 Act. Those sections require that a DMR 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. In circumstances where the respondent is receiving care in a nursing home, this includes the views of healthcare professionals.

18. As Ms O 'Dwyer, solicitor, pointed out in her very helpful submission, the court also has the benefit, today, of an affidavit of service sworn by Ms A, solicitor, on 18 June 2024. It is clear from the averments contained in that affidavit that the application was served personally on the respondent on 25 May and that Ms A returned to the nursing home and met the respondent for a second time on 17 June. Ms A makes averments, *inter alia*, to the effect that she explained the contents of the application papers to the respondent in appropriate language. In the manner Ms A avers, the respondent expressed no view

despite being asked about a choice of DMR other than to say "yes" and to inform Ms A, "*I am alright, I am in perfect health*".

Independent social worker

19. As averred by Ms Burke, the applicant also engaged the services of an independent social worker, Mr B. Mr B met with the respondent on 21 September 2023 and I have had sight of his helpful 22 September report which states, *inter alia*, that the respondent looked physically well for her 89 years. He goes on to say "*immediately I could ascertain that she would not be able to comprehend very much. She has advanced dementia. It seems obvious she will require a decision-making representative.*" Speaking to current care, Mr B's conclusions include to say that the respondent seemed to be "*...well looked after in the nursing home. She seemed very settled and content in her own way. Staff have gotten to know her eccentricities and work around her. She is quite confused and would not have the cognitive ability to understand the assisted decision-making process.*"

Assets

20. With regard to the respondent's assets, Ms Burke makes averments from paras. 13-18 of the grounding affidavit and exhibits a Schedule of same. In summary, these comprise of Irish and American pensions paid into certain bank accounts; certain monies in court; certain monies in the committee account; and a right of residence in a certain property.

21. At para. 21 it is averred that there is no Enduring Power of Attorney or Advanced Healthcare Directive known to exist. It is averred, at para. 22, that a will is lodged in the Wards of Court Office, but it is not known whether there is any other will in existence or whether the will as lodged is valid.

DMR nominated

22. It is averred that it was appropriate for a DMR to be appointed, and bearing in mind that the respondent has expressed no view, the nomination of Mr F was approved. According to the information provided via the Decision Support Service (or "DSS"), Mr F is a qualified psychiatric nurse, as well as a member of the Irish Auctioneers and Valuers Institute, and an accredited mediator.

Declaration

23. To draw this ruling to a conclusion, in light of the evidence before the court, it is appropriate to make a declaration pursuant to s.55(1)(b)(ii) of the 2015 Act that the respondent lacks capacity to make decisions in relation to health, personal welfare, property and financial affairs, even if the assistance of a suitable person as co-decision-maker were to be made available to her.

Orders

24. In relation to appropriate orders, Ms O'Dwyer has very helpfully provided a draft. In summary, the appropriate orders are:-

- (1) An order pursuant to **s.27 of the Civil Law Miscellaneous Provisions Act 2008** in relation to reporting restrictions
- (2) To order the discharge of the respondent from wardship, pursuant to **s.55(5)(b)** of the Act, and to remit her to the management of her affairs with the appointment of a DMR.
- (3) To order the appointment of Mr F as DMR, pursuant to **s.55(5)(b)**, in all areas covered by the Act, namely, personal welfare and property and affairs decisions.
- (4) To order that the DMR is authorised to receive the assets held by the Accountant of the Courts of Justice, and in the committee account maintained by the General Solicitor, on production of details of a bank account in the name of the respondent and the DMR (with the said account being under the custody, control and management of Mr F, the DMR).
- (5) To order that the Accountant of the Courts of Justice carry out the directions contained in the payment schedule.
- (6) It is appropriate also to order that the DMR be entitled to receive the Department of Social Protection payment. The DMR is also authorised to receive the respondent's pension from the USA and the DMR is authorised to assist the respondent in taking all necessary steps to protect her right of residence in the relevant property.
- (7) The DMR is to account to the director of the DSS in accordance with **s.46(6)** of the 2015 Act.
- (8) Being a professional DMR appointed from the panel, it is appropriate to order, in light of **s.42(1) and (2)** of the 2015 Act, that the DMR is not entitled to be reimbursed from the assets of the respondent in respect of his expenses or remuneration in the context of performing his role.
- (9) Given Dr H's view in relation to the lifelong nature of the respondent's conditions, it is appropriate to order that the respondent's capacity be reviewed by the Circuit Court no later than three years from the date of this order.
- (10) It is appropriate to order that the DMR be authorised to receive a copy of the pleadings and court booklet.
- (11) I also note that no order for costs is sought in today's application.

25. Finally, I want to thank all of those who have been providing care to the respondent and to congratulate [the respondent] on exiting wardship.