

THE HIGH COURT

WARDS OF COURT

[2024] IEHC 451

[WOC 0791]

**IN THE MATTER OF J.G., 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 the 24th of June 2024

1. I am satisfied, for the reasons I will come to, that no issue arises in light of s. 139 of the 2015 Act and no injustice arises by proceeding in the absence of [the respondent]. Put simply, it was his expressed will and preference *not* to participate, and I will come to the evidence in relation to that.

2. This is an application about [the respondent] leaving wardship and I will refer to him during this ruling as “the respondent”. It is an application brought under s.55 of the Assisted Decision-Making Capacity Act 2015 (“the 2015 Act”). The respondent is “the relevant person” under that Act. The court’s role today, having considered the evidence, is to make one or more declarations: namely, that the respondent either: (i) does not lack capacity; or (ii) lacks capacity unless the assistance of a suitable person as co-decision-maker can be made available; or (iii) lacks capacity even if the assistance of a suitable co-decision-maker can be provided. If that third scenario arises on foot of the evidence, it is appropriate for the court to appoint a decision-making representative (or “DMR”) in relation to the relevant area of decision-making, or areas of decisions.

Relevant facts

3. Turning to salient facts in the present case, the respondent is a gentleman born in 1967. According to the evidence, he had, tragically, a very serious accident at a young age and is someone with a mild intellectual disability as well as profound deafness. He was admitted to wardship in February 1987. His sister, [redacted], is committee of his person and estate and the committee brings today’s application. The respondent resides somewhere where he receives necessary supports.

4. The committee’s application was commenced by way of a motion which issued on 17 July 2023. I have the benefit today of a number of affidavits sworn by the applicant, namely, on 14 July 2023 as well as on 2 February and, most recently, on 13 June 2024. Between them, these affidavits aver to, *inter alia*, the respondent’s diagnosis, his

admission to wardship, his living situation, his support needs, the steps taken to bring the present application, the medical evidence, the respondent's assets and his views concerning the present application.

5. I have also had the benefit of an affidavit sworn on 13 June 2024 by the applicant's adult daughter, [redacted], who also participates online and is very welcome indeed.

6. In the manner averred to at para. 3 of the applicant's first affidavit, the respondent was notified of this application and invited to attend but declined to do so, and I will presently refer to further evidence, in particular, an affidavit of service sworn by the solicitor who met with the respondent on 9 January 2024.

Medical evidence

7. Turning to the medical evidence, Dr. H is a consultant psychiatrist who carried out an assessment of the respondent on 3 August 2023. Dr. H states, *inter alia*, the following in relation to the respondent's capacity, on a functional assessment, to make decisions in particular areas. Having opined that the respondent's illness is permanent and not likely to improve, Dr. H says the following in relation to health decisions:-

"In my opinion, [the respondent] did not understand the information relevant to health decisions, retain the information, or use and weigh the information to make a decision."

8. Dr. H expressed the same opinion in relation to decisions in the area of welfare, including supports required for the activities of daily living and in relation to property and financial decisions.

9. Although it does not touch on questions of capacity, she stated the following in relation to what is plainly the great supports being provided to the respondent to enable him to live a full life:-

"[The respondent] seemed to be very content living in the accommodation at [named] Services. It was lovely there, clean and well organised, orientated towards his wishes and needs. He was a member of the local swimming pool centre and he goes swimming every day. He can choose his meals, he had a cinema pass and he and the social care workers were regularly going to the cinema. He lived alone in the accommodation and it was very cosy there."

10. In relation to the evidence on capacity, it is clear that the findings by Dr. H would support declarations under s. 55(1)(b)(ii) of the 2015 Act that the respondent lacks capacity to make decisions in all areas covered by the Act even with the assistance of a co-decision-maker. No issue has been taken with Dr. H's views, by or on behalf, of the respondent and, therefore, her opinion on capacity comprises uncontested evidence.

Service

11. The court also has the benefit today of affidavits sworn by Ms. C solicitor who moves the application on behalf of the applicant. Those affidavits were sworn on 1 March and 8 May 2024, and they make clear that the application was served personally on the respondent. Ms. C Also makes averments to the effect that she explained the contents of the papers and the implications of today's application to the respondent, with the assistance of a Mr. D, care assistant, who used sign language to communicate with the respondent.

12. At para. 4 of her 8 May affidavit, Ms. C avers that the respondent was invited to attend today's hearing but declined to do so. That brings me back to the views I expressed at the outset, namely, that no issue can arise by proceeding in the absence of the respondent. Rather, doing so represents and respects his expressed wish.

Proposed DMRs

13. [The respondent's sister] makes the following averments in her 13 June 2024 affidavit:-

"I have always made all decisions with the relevant person in respect of his medical and personal welfare, care, treatment, property and affairs since he was made a Ward of court on 16th February 1987. He has indicated to me that he is happy for me to continue to do so jointly and severally with my daughter [redacted] and for us to become his decision care representatives."

14. She proceeds to aver:-

"I say that the relevant person has indicated that he is happy for both myself and my daughter [redacted] to act jointly and severally by reason of the fact that I am advancing in years and if anything may happen to either of us which prevents us from carrying out our duties, by having two decision care representatives who are familiar from the outset with managing all of the relevant person's affairs including his financial affairs, the necessary delay which would arise in a future application to appoint an alternative decision care representative can be avoided."

15. In her affidavit sworn on 13 June, [the respondent's niece] makes, among other things, the following averments:-

"I have been assisting my mother [the respondent's sister] the committee for a number of years now in relation to all matters pertaining to the relevant person and I have known the following."

16. She goes on to aver, *inter alia*:-

"I am familiar with the known will and preference of the relevant person. I have the desirability of preserving existing relationships within the family of the relevant person. I am the niece of the relevant person and attend at my mother's home"

regularly when the relevant person comes to stay every week and on the holidays. I am familiar with him and compatible with all of his needs and requirements. I consent to acting as joint decision-making representative and will be able to perform the functions to be vested in me."

Assets / EPA

17. In relation to assets (which are also detailed in a schedule included in the application), [the respondent's sister] makes averments. In summary, the assets comprise of certain monies in court as well as in the committee account. At para. 6 of the applicant's 2 February 2024 affidavit, it is averred that there is no Enduring Power of Attorney ("EPA") or Will or Advanced Healthcare Directive known to exist. In light of that evidence which I have attempted to summarise, I now turn to the declaration which it is appropriate to make in light of the evidence.

Declaration

18. I am satisfied that it is appropriate, pursuant to s. 55(1)(b)(ii) of the 2015 Act to declare that the respondent lacks capacity to make decisions regarding his health, personal welfare, and property and financial affairs, even if the assistance of a suitable person as co-decision-maker were made available to him.

Orders

19. In terms of orders, the applicant has very helpfully provided a draft and this accords with the relief sought in the motion. These orders would seem to be appropriate, subject to the following slight amendments. I am satisfied that the appropriate orders flowing from the evidence comprise of:-

- (1) An order under **s. 27 of the Civil Law (Miscellaneous Provisions) Act 2008** with regard to reporting restrictions;
- (2) It is appropriate to appoint the respondent's sister, [redacted], and the respondent's niece, [redacted], as decision-making representatives acting jointly and severally in respect of all areas covered by the 2015 Act, namely health, personal welfare, and property and financial affairs. That is subject to, of course, performing the role in accordance with **ss. 8(7) and (8) of the 2015 Act**. Those sections require decision-making representatives (or DMR)s to encourage and facilitate input from a respondent insofar as possible and entitle a DMR to consider the views of those caring for or having a *bona fide* interest in the welfare of a respondent and that includes health care professionals;
- (3) It is appropriate to order that the respondent be discharged from wardship pursuant to **s. 55(5)(b)** and remitted to the management of his affairs with the assistance of his decision-making representatives.
- (4) An order that the DMRs are entitled to receive a copy of the pleadings and papers in this application if they have not already;

- (5) The DMRs are authorised to receive the respondent's assets. In light of **s. 55(5)(c)** which requires the court to order that the property of a person the subject of a discharge under para. (b) be returned to him on appointment of a decision-making representative, it is more appropriate to order that the DMRs be authorised to receive the respondent's assets on the production of details of a bank account in the name of the DMRs and the respondent (with the said account being under the custody, control and management of the DMRs)
- (6) The DMRs are to act jointly and severally for the respondent's benefit in the carrying out of their function;
- (7) The DMRs are also to account to the director of the Decision Support Service (the "DSS") in accordance with **s. 46(6) of the 2015 Act**;
- (8) It is appropriate to order that the Accountant of the Courts of Justice carry out the directions set out in the payment schedule;
- (9) In relation to a review of capacity by the Circuit Court, given the permanent and lifelong nature of the condition, it is appropriate to 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 the order;
- (10) In relation to the question of costs, the applicants have had to retain a legal representative and it is appropriate to make an order for the applicant's costs, to be adjudicated in default of agreement.

20. I want to pass on my congratulations to [the respondent] on his leaving wardship and to thank what is clearly a very loving family in [the respondent's sister], in particular for all the assistance that she has given to her brother for so many years, and to wish her and her daughter, [redacted], the very best in continuing to support the respondent who, on the evidence, is clearly someone living a full life and receiving appropriate care.