

THE HIGH COURT

WARDS OF COURT

[2024] IEHC 380

[WOC 11013]

IN THE MATTER OF F.K., A WARD OF COURT

RESPONDENT

Ex tempore Ruling of Mr. Justice Mark Heslin delivered on 6th June 2024

1. I propose to give a ruling now in relation to this application which concerns a gentleman in his 70s. According to the reporting before the court, he is someone who has been assessed as having vascular and alcohol-related dementia, which is irreversible.

2. The respondent currently resides in [a nursing home] and a review by this Court took place on 25 April of this year. The outcome was that no order was made on the Part X review (under the Assisted Decision-Making Capacity Act 2015) but, under this Court's preserved wardship jurisdiction, orders previously made on 7 December 2023 were continued.

Verbal allegations

3. On the last occasion, this Court noted, and it is reflected in the order made on 25 April, certain alleged incidents referred to in a verbal contribution by a son of the respondent. In summary, these were allegations concerning incidents on unspecified dates approximately 18 months ago and 9 months ago; a concern about the distance of the nursing home from family and the proposition that the respondent should be moved to a different nursing home; as well as an incident when, according to [the respondent's son], he was allegedly denied access to visit with his father.

Affidavit

4. As I say, those were issues raised on his feet by [the respondent's son] and in those circumstances I explained to him that this Court would certainly consider all evidence and in that regard, I directed he should furnish an affidavit to the solicitors representing the applicant, the HSE, within three weeks, namely by 15 May. This would be of obvious assistance because it would enable [the respondent's son] to set out in full and in writing and in the form of evidence, the facts which he was relying in relation to the allegations made. It would also be consistent with basic principles of fairness and natural justice because it would enable the applicant to have an opportunity to respond and therefore, today, the court would have the benefit of full reporting.

No affidavit and no appearance

5. It is unfortunate, to say the least, that the respondent's son has provided no affidavit despite this Court's direction. It is also unfortunate that he has chosen not to appear today. This is a situation where in 'net' terms allegations of quite a serious nature were raised and there has been simply no 'follow through' in terms of a factual underpinning for any of those, despite this Court's directions.

Evidence re events of December 2021

6. It is also clear that whilst the respondent's son has not followed up by proffering any evidence in support of allegations made, a considerable amount of work has been done to deal with the assertions. I say this, in circumstances where, today, I have the benefit of a 31 May report by the 'Person in charge' of the nursing home placement, Mr. G., at the request of the applicant. This very detailed report confirms, *inter alia*, that there was no incident in or about January 2023 involving the respondent. According to this report, the incident to which the respondent's son appears to be referring, is with regard to the events of the early morning of 26 December 2021 when staff intervened to safeguard the respondent against serious self-injurious behaviours. A copy of the investigation report provided by the then Person in charge is attached to the 31 May 2024 report. It found no evidence to support any allegation of physical abuse of the respondent by staff. Moreover, the then Person in charge formally notified the Chief Inspector of Social Services of the allegation. The Chief Inspector was satisfied that the matter had been investigated to her satisfaction and the matter was closed on that basis.

Evidence re events of July 2023

7. The recent nursing home report also encloses a statutory notification form in relation to an allegation of physical abuse of the respondent by another resident of the nursing home in respect of an alleged incident on 20 July 2023. This nursing home report confirms that a full investigation took place, the outcome of which was that the other service user simply reacted involuntarily to the respondent touching his hand. Based on evidence by the healthcare assistants who witnessed the events, the other service user swung around after the respondent touched his hand, resulting in that resident touching the respondent's face, left hand, and the side of his nose. The nursing home confirms that a formal report was made at the relevant time to the Chief Inspector of Social Services. They were satisfied that the matter had been satisfactorily investigated and closed the matter on that basis.

Family visit

8. The recent report also sets out, in extensive detail, the circumstances surrounding a visit of family (comprising one gentleman and two children) to the respondent on 21 July 2023. Of note is that the report states that the respondent informed the healthcare assistant who was attending him, and this is someone said to be familiar with the respondent, that he did *not* wish to have visitors on that particular date at that particular point. According to the nursing home report, the Person in charge met with the visitors

and a detailed account of interactions is given. It is appropriate to quote as follows from the report by the Person in charge:-

"On the evening of 21 July 2023, [the respondent] expressed his will and preference to a healthcare assistant within [the nursing home] that he did not want to see or receive any visitors on that date. As the person in charge of [the nursing home] and the person named by the High Court Order charged with ensuring the safety and welfare of [the respondent], I formed the view that, based on [the respondent]'s expressed wishes of not wanting to see or receive any visitors on that date, together with the apparent aggressive and threatening tone and behaviour of certain family members of [the respondent], that it would not be in [the respondent]'s interest to permit any visitor to include family members to see [the respondent] on that particular date, 21 July 2023".

Respect for the respondent's wish

9. I pause to say that it is of fundamental importance that the dignity of the respondent be respected and where they have expressed a wish, which is reasonably capable of being given effect to, it is important that this wish be respected and that, on the evidence, is precisely what occurred.

10. Although, as I say, allegations were made verbally in the submission by the respondent's son on 25 April, and the opportunity was given to him to file an affidavit setting out the factual basis for those allegations, the state of the evidence before this Court is that there is not a shred of evidence to support any of the assertions made. On the contrary, the evidence before the court wholly undermines the allegations.

11. Recalling the terms of the orders under review, and on the evidence before the court, it is clear that the Person in charge acted reasonably and acted in accordance with, not only the respondent's expressed will, but with the provisions of Clause 4 of the Order, reflected in the 7 December Order.

Care of the highest standard

12. I also have the benefit today of medical evidence from Dr T. who states, *inter alia*, the following in a report dated 4 June 2024:-

"[The respondent] has a history of stroke disease, dysarthria, pseudobulbar palsy a moderate to severe vascular dementia confirmed by cognitive assessments and CT brain scan. [The respondent's] dementia will likely worsen in time. He has shown aggression, falls risk, and absconding behaviour which require constant monitoring. Despite the challenges he faces it is my professional opinion that the care he is receiving is of the highest standard ensuring his medical, social and psychological needs are met with the utmost diligence."

Capacity

13. On the question of capacity, Dr T. states:-

"[The respondent] is currently incapable of managing his affairs independently. His cognitive decline and limited comprehension significantly impair his ability to make informed decisions regarding his personal care and financial matters."

Change of environment

14. And, later still in this report of 4 June, Dr T. states:-

"I would believe changing his environment would have a negative impact on his mental health."

15. I pause to say that this very up-to-date medical evidence speaks to one of the issues raised by the respondent's son, namely, an expressed concern about the distance of the nursing home from family and the desire for the respondent to be moved to a nursing home closer to them. Several comments are appropriate. First, the medical evidence is that this would be damaging or potentially damaging to the respondent. Second, as (counsel for the applicant) Ms Hill BL is instructed, the current nursing home is some 18kms away from family and, in objective terms, that cannot be considered to be a great distance. Third, none of the evidence before the court today is to the effect that the expressed wish of the respondent himself is to move to a different nursing home, be that closer to family or otherwise.

Current orders

16. Speaking directly to the appropriateness of and necessity for the current orders to be continued, Dr T. opines, *inter alia*, the following:-

"[The respondent], I advise in my clinical opinion, continues to be of unsound mind with lack of insight into his needs and safety and would not be capable of making a safe decision regarding leaving the support of residential care. I believe his placement in residential care remains in his best interest and that a detention order is appropriate. For this reason I believe it is necessary at present for a continued detention order to remain in place in respect of [the respondent]. I remain committed to providing [the respondent] with the necessary support and medical attention he requires. My primary goal is to maintain his best interests and fundamental rights which I believe are being upheld in his current living arrangement."

Care needs

17. I also note the views expressed by Dr W., Consultant Psychiatrist, in her report of 13 October last and this included to confirm that the respondent's mild cognitive impairment, with a Mental Health State Examination score of 22 out of 30, and physical disability, hemiplegia, have made him dependent on 'round the clock' nursing support with his activities of daily living. Later in the same report, Dr W. states that there was evidence of organic brain damage and mild cognitive impairment and that the respondent meets some but not all of the criteria for mental disorder.

Inappropriate behaviour

18. I also note that in Dr W.'s 9 February report she stated, in relation to a review carried out on 9 February, and I quote "*I was advised by the manager on 2 February that he packed his bags on that day and asked to leave the nursing home. His elderly wife and son visit approximately once a month and after they visit he can get upset and asks to return home*". There is also reference in that report to what, in objective terms, is very inappropriate behaviour by family in respect of events after a Christmas party in the nursing home.

19. I also have the benefit today of reporting by way of a 15 April 2024 report by Dr B. Dr B. states and I quote "[the respondent] *constantly looks to go home which is encouraged by his family when they visit. This only increases his agitation and desire to leave the centre. This can lead to challenging outbursts towards staff members and self-harm type behaviour such as hitting his head against walls and doors. A risk remains that he could attempt to leave which would be completely unsafe for him to do so*".

Contrary to the respondent's best interests

20. I pause to say that for family to encourage the respondent to go home, given the evidence as to his lack of capacity and very extensive need for 24 hour care, is wholly inappropriate. I say that because the evidence is that such encouragement leads to distress and self-harm on the part of the respondent. That is plainly contrary to his best interests and, therefore, no such encouragement to go home should be given by family to the respondent. This is because doing so is utterly contrary to his best interests and causes harm.

21. The report by Dr B. also states that while the respondent is currently stable, he has dementia with a lack of insight into his needs and his safety. The respondent has a high risk of falls and has a history of swallowing difficulties.

The respondent's views

22. In addition, I have the benefit today of an affidavit sworn on 5 June by Ms C. solicitor. Ms C. is someone who is familiar with the respondent for some time, having been appointed as his guardian *ad litem* in respect of the present proceedings on 13 August 2021 and, following the respondent's admission to wardship, she was engaged by the Committee, the General Solicitor, to bring the respondent's views before this Court. Ms C. also acted as the respondent's independent solicitor for the purposes of the recent Part X review.

23. Ms C. met with the respondent as recently as 4 June at the nursing home and her averments include, *inter alia*, the following:-

"[The respondent] *said 'nothing makes me happy I just want to go home'.*"

24. Later she avers:-

"I spoke to [the respondent] about his consistent wish to return home and I advised that in my opinion he would not be able to manage as he receives a great deal of help and support in the nursing home. [The respondent] got annoyed at this and said he needs no care at all stating 'no carers I'd manage alright'. I asked [the respondent] if he speaks with other people and he told me he goes to the garden for cigarettes but said 'I'd prefer to be in my own garden for a cigarette'. [The respondent] engaged better than on other occasions and he asked me to explain to him how he came to be living in the nursing home. We had a good chat about him being a patient in [a named] Hospital and his doctor recommending nursing home care. I asked [the respondent] if he liked the staff and he replied, 'some of them are alright'. In response to my enquiry he indicated that the food was okay. [The respondent] raised queries about his pension, and I told him I would seek clarification from the Committee in respect of same. Before the end of our meeting, his staff returned to join him, and it was evident by their interactions that they have a very good relationship."

25. Her affidavit concludes as follows: -

"[The respondent] told me that he does not want to attend court in person or online at the review of his case listed for 6 June 2024".

26. And that, of course, is an expressed view which this Court can only respect.

27. I am grateful to Ms Hill who moves this application which is for a continuation of the current orders and to Mr Hynes who makes clear that there is no objection to that, and who articulates the position of Ms C. on behalf of the Committee.

28. I am satisfied entirely that a consideration of the evidence allows for a finding that to continue the current orders in the same terms is appropriate and necessary and very much in the respondent's best interests. By way of final comment, I want to emphasise the two points I touched on earlier.

The respondent to return home

29. First, it is wholly inappropriate for family to encourage this vulnerable gentleman to return home because of the harm that causes him and in circumstances where the evidence makes clear that is not at all a realistic proposition.

Unsubstantiated allegations

30. Second, I regard it as wholly inappropriate for anyone, regardless of how well intentioned, to make a range of assertions verbally yet, when given the opportunity to provide evidence to underpin those assertions, to fail, indeed refuse to do so, despite having been given adequate time to file an affidavit and despite having been directed to file that affidavit and also to fail to appear in court to offer any explanation for why allegations of a serious kind were made but then, in substance, abandoned.

Basic fairness

31. Why this is inappropriate, is a question of basic fairness. Allegations which are not underpinned by fact can very obviously cause distress to those impugned in the allegations. They also give rise to unnecessary time and cost in terms of the need - in this case elegantly evidenced by the wealth of information which the HSE and the nursing home have been forced to put before the court today - in order that the factual position can be set out. The latter comment is particularly appropriate when, as appears to be the case here, allegations are made more than once, and the same allegation is repeated. I hope it is clear from this ruling that that should not continue.

Continue current orders

32. To conclude, the evidence makes it very clear that it is necessary, proportionate and in the respondent's best interests and entirely appropriate to continue the current orders given that the respondent himself is not seeking a change of placement. It does not seem to me appropriate for this Court to direct any enquiries to be made in relation to an alternative nursing home, in short, this vulnerable gentleman wishes to be at home. That is his expressed wish but, sadly, the reality of his current condition - which on the evidence is a deteriorating one - renders that impossible.