

# THE HIGH COURT

## WARDS OF COURT

[2024] IEHC 395

[WOC 9126]

### IN THE MATTER OF S.A., 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. I propose to give a ruling in relation to the application. First, I want to express my thanks to Ms. O'D solicitor who moves the application today. I want to extend a very warm welcome to [the respondent] who joins us online for this hearing. Today's application is about [the respondent] leaving wardship and, during this ruling, I will refer to her as the respondent. This 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**

2. The court has a job to do today. It involves considering the evidence which has been put before it and, having done so, to make a declaration. The options available, depending on the evidence, are to declare: (i) 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) that they lack capacity even with the assistance of a co-decision-maker. If that third scenario applies, it is appropriate that a decision-making representative (or "DMR") be appointed.

##### **The respondent**

3. In relation to certain basic facts in the present case, the respondent is a lady in her 70s. According to the evidence before the court, she has a diagnosis of dementia. She was admitted to wardship in [redacted] 2017 and the General Solicitor for Minors and Wards of Court is her committee in wardship in respect of her person and estate. The respondent currently resides in a certain nursing home and she has lived there since 2015. The committee brought the present application by way of a motion which issued on 26 May 2023. The motion was grounded on - that is based on or supported by - an affidavit i.e. a sworn document, furnished by Ms. BK of the General Solicitor's Office. That affidavit sets out relevant information including the respondent's diagnosis, her admission to wardship, her current living situation and her needs. It is averred, among other things, that the

respondent's husband, from whom she was estranged, passed away some years ago and that she has a sister with whom she is not in contact.

4. In the manner explained, at paras. 5 and 6 of the grounding affidavit, 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 director of nursing of her residence, Ms. A.

#### **Medical evidence**

5. I have the benefit, today, of medical evidence. It was provided by Dr. R, who is a consultant psychiatrist. Dr. R carried out an assessment of the respondent on 26 October of last year. As regards the nature of the respondent's condition and her capacity in relation to making decisions in particular areas, Dr. R states, *inter alia*, the following, in his 11 January 2024 report:-

*"[The respondent] has a severe dementia most likely of mixed aetiology that is likely to be a mixed Alzheimer's disease and vascular dementia."*

6. Later, Dr. R states *"this dementia is permanent and progressive"*. He goes on to state, among other things:-

*"She has no insight into the level of her cognitive difficulties, neither does she have any understanding of her current level of physical dependency. For example, she believed she was still living independently and still able to walk."*

7. Elsewhere, Dr. R states:-

*"She is totally dependent on staff for all aspects of her general care and activities of daily living ("ADLs"). Having significant physical and mental health difficulties, she is unable to walk and requires two staff and hoist equipment to help with mobilisation."*

8. Dr. R refers to specific assessment tools as follows; use of the Mini Mental State Examination ("MMSE") verified that she has severe cognitive impairment. Her MMSE score was 9 out of 30.

#### **Health (including care and treatment) decisions**

9. Turning then to decision-making in the area of health, including care and treatment, Dr. R states the following: *"To understand the information relevant to the decision. No"*, and he opines that the respondent is also unable to retain that information long enough to make a voluntary choice, and unable to use or weigh that information as part of the process of making the decision.

#### **Welfare and Property & Financial decisions**

10. Dr. R carries out the same functional capacity assessment with respect to decisions in the area of welfare including supports required for ADLs and in the area of property and

financial decisions. In both cases, Dr. R comes to the same view, namely, that the respondent is unable to understand, unable to retain, and unable to use or weigh, relevant information in the context of coming to a decision. That evidence which, in the manner I will come to, is uncontroverted, supports a declaration being made that the respondent lacks capacity to make decisions concerning her health, her welfare and her property and financial affairs, even with the assistance of a co-decision-maker.

### **Discharge recommendations**

**11.** In relation to recommendations for discharge from wardship, Dr. R states, and I quote:-

*"In my opinion, [the respondent] lacks capacity even if the assistance of a suitable person as a co-decision-maker were to be made available to her."*

**12.** No issue has been taken with this medical evidence by or on behalf of the respondent. Therefore, this is the state of the medical evidence and it is, as I say, uncontroverted.

### **Section 8 (7) and (8) of the 2015 Act**

**13.** Ms. BK avers, at para. 19 of her affidavit, that, in the present case, it would be appropriate for the court to appoint a DMR, subject to the obligations set out in ss. 8(7) and (8) of the 2015 Act. Those sections require the decision-making representative to encourage and facilitate input from the respondent insofar as possible, and entitle the DMR to consider the views of those caring for or having a *bona fide* interest in the welfare of the respondent, and that is of particular relevance in the present case, and it includes health care professionals.

### **Service**

**14.** In relation to service, I have the benefit today of an affidavit sworn by Mr. L, solicitor, on 28 June last, and it is very clear from the averments in that affidavit that service of the papers in respect of today's application was properly effected, personally, on the respondent on 28 June of this year. Mr. L also makes averments to the effect that he explained the contents of the motion papers to the respondent. He also avers that, whilst it was difficult for him to say whether or not the respondent understood what he was saying to her, she did appear to.

### **Choice of DMR**

**15.** Of particular relevance are the following averments, from paras. 4 and 6 respectively, and I quote:-

*"She did not feel that she had anyone appropriate to fill the role of decision-making representative. It was confirmed to me that there was no family or any other party that would have visited with her. I explained that she did not need to worry about it and that the judge would have a list of suitable people from which to choose someone who would be then able to assist her with decisions."*

**16.** Later, Mr. L avers that he met with the director of nursing in circumstances where he wished to check the respondent's records to see if anyone had been taking an interest in her from her family and he avers:-

*"It appears that she does not have any family involvement and her next-of-kin on her record is the General Solicitor's Office."*

**17.** At paras. 13 to 17 of her affidavit, Ms. BK makes averments in relation to the respondent's assets. These are detailed in a schedule which she exhibits. In summary, these comprise on funds in court; monies in her committee account maintained by the General Solicitor's Office; and two UK pensions paid into her committee account held with the General Solicitor's Office.

#### **Independent social worker**

**18.** As Ms. O'D touched on in her very helpful submission, the applicant engaged an independent social worker, Mr. B, and he met with the respondent on 27 July of last year, and prepared a report dated 28 July. That report states, among other things:-

*"[The respondent] seems very well cared for in nursing home. She is slowly deteriorating mentally but seems very content and at ease. Staff know her eccentricities and seem kind and respectful to her. [The respondent] is very settled."*

**19.** With reference to a visit from a representative of 'Alone', Mr. B is very pleased to note that she is getting a regular visitor weekly from this agency and he concludes his report by expressing the view that, as regards capacity: *"It seems obvious that the respondent will require a court-appointed representative."*

**20.** At para. 20 of the grounding affidavit, it is averred that there is no enduring power of attorney or advanced healthcare directive known to exist and, at para. 18, Ms. BK makes averments to the effect that there appears to be no suitable person willing to or in a position to act as DMR.

#### **Nomination of DMR**

**21.** In these circumstances, and as provided for under the 2015 Act, nominations were made, and the nomination of Mr. O'C to act as DMR was approved by the President. In terms of qualifications and experience. Mr. O'C is a qualified solicitor with particular expertise in advising elderly and vulnerable clients and, among other things, has previously acted as a guardian *ad litem* for vulnerable persons. I want to welcome Mr. O'C who also joins us 'online' for this application.

#### **Declaration**

**22.** Having regard to the evidence, it is appropriate for the court to make the following declaration, namely pursuant to s. 55(1)(b)(ii) of the 2015 Act, to declare that the

respondent lacks capacity to make decisions regarding her health, personal welfare, property and affairs, even if the assistance of a suitable co-decision-maker were made available to her.

### **Orders**

**23.** In terms of orders, Ms. O'D has very helpfully provided a draft and to make orders in terms of the draft is appropriate having regard to the evidence which I have summarised. For the purposes of this ruling, those orders, in summary, are as follows:-

- (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 each of the areas covered by the 2015 Act, namely health, welfare, and property and financial affairs;
- (3) An order that the respondent be discharged from wardship pursuant to s.55(5)(b) and remitted to the management of her affairs with the assistance of her DMR, subject to the obligations set out in s.s. 8 (7) and (8) of the 2015 Act;
- (4) To order that the DMR is entitled to receive a copy of the pleadings and papers in this application;
- (5) To order that the respondent is entitled to receive her various assets as detailed in the application, namely, those held on her behalf by the Accountant of the Courts of Justice, and in the Committee account;
- (6) To order that the Accountant of the Court of Justice carry out the directions in the payment schedule;
- (7) To order that the DMR be entitled to receive payment of the respondent's UK pensions, on her behalf, and to account to the director of the Decision Support Service in accordance with s. 46(6) of the 2015 act;
- (8) In accordance with ss. 42(1) and (2) of the 2015 Act, the DMR, being a professional, is not entitled to reimbursement of expenses or payment of remuneration out of the respondent's assets;
- (9) And, having a regard to the evidence, including the nature of the respondent's condition, it is appropriate to make an order pursuant to s. 55A(1) of the 2015 that the respondent's capacity be reviewed no later than three years from today's date.

**24.** Finally, I note that the applicant is not seeking costs in today's application. Therefore, it simply leaves me to thank those involved and to wish [the respondent] the very best and congratulate her on exiting wardship.