

# THE HIGH COURT

## WARDS OF COURT

[2024] IEHC 449

[WOC 11056]

### IN THE MATTER OF S.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 the 3<sup>rd</sup> day of July 2024

1. To begin the ruling, I want to thank Ms. Butler who moves the application today on behalf of the committee and to welcome [the respondent] who has been facilitated with participation 'online' and also has the assistance of Ms. B, his carer. The respondent is very welcome even though I understand that, as a result of his presentation, he has been going in and out and is currently out having a cigarette. The guardian ad litem, Mr. Lennon, is also very welcome and his presence is in the context of separate legal proceedings under this court's inherent jurisdiction. I am also grateful to Ms. Hill BL who represents the HSE in those proceedings which run in parallel and are distinct from today's application and will not be affected by the declaration and orders made as a result of this application.

2. This is, of course, an application about [the respondent] leaving wardship. I will refer to him as "the respondent" for the purpose of this ruling. 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 that Act.

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

3. The court's role today is to consider the evidence before it and to make one or more declarations in relation to certain areas of decision-making. The alternatives are: (i) to declare that the 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; or (iii) lacks capacity even with the assistance of a co-decision-maker. If that third scenario arises on foot of a consideration of the evidence, the court should appoint a decision-making representative or "DMR" and, today, such an application is being moved.

#### **Relevant facts**

4. Turning to certain relevant facts, the respondent is a gentleman born in 1982 and, according to the evidence before the court, he has a diagnosis of schizophrenia. He was

admitted to Wardship in December 2021 and the General Solicitor is committee of his person and estate.

### **Inherent Jurisdiction**

**5.** The respondent currently resides at a certain placement with the Talbot Group. Orders were made on the 7<sup>th</sup> February 2024, under the court's inherent jurisdiction, which provide for the respondent's detention at the placement for his safety and welfare, in order to receive necessary care and treatment. As Ms. Hill points out, those orders will be the subject of an intensive review as soon as the 24<sup>th</sup> July 2024.

**6.** The committee has brought the present application by way of a motion which issued on the 26<sup>th</sup> October 2003. That motion was grounded on an affidavit sworn by Ms Fionnuala Burke of the General Solicitor's Office. It sets out relevant information, including with regard to diagnosis, admission to wardship, the respondent's living situation, his needs, steps taken to bring this application, relevant medical evidence and the respondent's assets. Among other things, it is averred that the respondent is a separated man who has no contact with his two children and that his parents are his next of kin.

**7.** In the manner averred at paras. 7-11 of Ms. Burke's grounding affidavit, correspondence concerning today's application was sent to the respondent which included a 'reader friendly' leaflet about leaving wardship. Correspondence was also sent to Ms. L, the person in charge of his placement, and to the respondent's father and mother, respectively. At para. 11 Ms. Burke avers that one of his parents did not reply whereas the other's main concern is that the respondent might become homeless if discharged from wardship. It is also averred that Mr. Lee, solicitor, of the General Solicitor's Office, gave assurances that this would not be the case, and it certainly will not be.

### **Medical evidence**

**8.** Turning to the medical evidence Dr. H is a consultant psychiatrist and she assessed the respondent on the 31<sup>st</sup> July 2023. Regarding the nature of the respondent's illness and his capacity to make decisions in specific areas, Dr. H's report includes, inter alia, the following:

*"Schizophrenia is a chronic and enduring mental disorder which resembles a dementia in the similarity of their progressive disintegration of thinking and emotions, inability to manage tasks of daily living, and lack of goal directed behaviour. In my opinion [the respondent] did not understand the information relevant to health decisions, retain the information or use or weigh the information to make a decision."*

**9.** Dr. H came to a similar view in relation to decisions in the areas of welfare, including supports required for activities of daily living and with regard to property and financial decisions.

### **Residence and care**

**10.** In relation to the respondent's current residence and the care he receives there, Dr. H went on to say:- "[the respondent] *seemed to be very content to be living in [named] Care Facility. Staff spoke very warmly about him. He enjoyed the visits from his family every weekend and that he was developing an interest in the garden. The care facility was mentioned approvingly in a health information and quality authority disability services publication statement of June 2021 as enabling residents to participate in different activities as they wished.*"

### **Discharge recommendations**

**11.** In relation to recommendations for discharge Dr. H stated:-

*"[The respondent] lacks capacity even if the existence of a suitable person as a co-decision-maker were made available to him."*

### **Uncontroverted evidence**

**12.** As Ms. Butler has pointed out in her very helpful submission no issue has been taken with Dr. H's views. In other words, no second opinion was sought by or on behalf of the respondent, and Dr. H's medical evidence is uncontroverted for the purposes of today's application.

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

**13.** At para. 21 of the grounding affidavit Ms. Burke avers that, in the present case, it would be appropriate for a DMR to make decisions concerning the respondent's personal welfare and property and financial affairs, subject to the obligations set out in sections 8 (7) and (8) of the 2015 Act. Those sections require a DMR 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 (including healthcare professionals). These sections are of obvious relevance and application in the present case.

### **Service**

**14.** I also have the benefit, today, of an affidavit sworn by Mr. F, solicitor, on the 4<sup>th</sup> June 2024 and a second affidavit of service sworn on the 17<sup>th</sup> June. Their contents make clear that the application papers were served personally on the respondent on the 25<sup>th</sup> May and again on the 13<sup>th</sup> June. Mr. F also makes averments to the effect that he explained the contents of the papers to the respondent in simple language; sought the respondent's views on the identity of a DMR; and encouraged the respondent to attend today's hearing.

### **DMR**

**15.** On the important question of the identification of a DMR, Mr. F makes averments which include the following. At para. 5 of his 4<sup>th</sup> June affidavit he avers "*I asked [the respondent] if he had anybody in his life whom he trusted and whom he would like to be*

*decision-making representative. [The respondent] did not advise but instead laughed. I asked [the respondent] about his family life. he briefly mentioned football but his attention then went elsewhere.”* Between paragraphs 11-13 Mr. F makes averments including as follows:- “[The respondent] *did not present a name when given the opportunity to recommend a DMR. [The respondent] was not very interested in the discharge process and his response to my question as to whom he would like to be his DMR was not definitive.”* And at para. 13 it is averred “*I say that in further conversations with Linda B the person in charge stated that there is at present no family and/or friends whom she knows of that could be considered to be a DMR.”*

### **Assets**

**16.** At paras. 16-19, inclusive, Ms. Burke makes averments in relation to the respondent’s assets. These are also detailed in a schedule which is exhibited. In summary, these include certain monies in court; a disability allowance entitlement (and this allowance is paid into the respondent’s committee account); as well as certain monies in the respondent’s client account with the Talbot Group in respect of his current placement.

**17.** At para. 22, it is averred that there is no Enduring Power of Attorney or Advanced Healthcare Directive known to exist.

### **DMR nominated**

**18.** At para. 20 of the grounding affidavit, it is averred that there appears to be no suitable person available to act as DMR. In these circumstances the nomination of Mr. M was approved by the President. Mr. M is a social worker who has extensive experience working with vulnerable adults in healthcare settings.

### **Declaration**

**19.** Having summarised the evidence before the court and what it discloses, I am satisfied that it is appropriate for the court to make the following declaration. 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, property and financial affairs even if the assistance of a suitable co-decision-maker were made available to him.

### **Orders**

**20.** In terms of appropriate orders to make, Ms. Butler has very helpfully provided a draft. The evidence which I have summarised justifies the making of orders in those terms. In summary, these comprise of the following.

- An order pursuant to **s.27 of the Civil Law Miscellaneous Provisions Act 2008** in relation to reporting restrictions.
- An order discharging the respondent from wardship pursuant to **s.55.(5)(b) of the 2015 Act** and remitting him to the management of his affairs with the appointment of a DMR.

- An order appointing Mr. M as the respondent's DMR in the areas of personal welfare and property affairs decisions pursuant to **s.55.(5)(b) of the 2015 Act**.
- An order that, on production of details of a bank account in his own name and that of the respondent (with this account being under the custody, control and management of the DMR) that Mr. M as DMR be authorised to receive the assets held in the committee account.
- An order that the DMR is to account to the director of the decision support service or "DSS" pursuant to **s.46(6) of the 2015 Act**.
- It is also appropriate to order that the committee arrange for the respondent to receive his Department of Social Protection payment directly and for this arrangement to be reviewed by the DMR on or before twelve months from today's date.
- It is appropriate to order that the Accountant of the Courts of Justice is to carry out the directions contained in the payment schedule.
- In light of **s.42 (1) and (2) of the 2015 Act**, the DMR is not entitled to be reimbursed out of the assets of the respondent in relation to his expenses or remuneration incurred in the performance of his functions and, being a professional DMR nominated from the panel, other arrangements for payment are provided for and are thereby triggered insofar as they exist in the Act.
- I note that no application has been made for costs today.
- The applicant is authorised to provide a copy of the court booklet and pleadings to the DMR; and
- In relation to the respondent's capacity, and given the nature of his condition as explained in the medical report, it is appropriate to order under **s.55A(1)** that his capacity be reviewed by the Circuit Court no later than three years from the date of today's order.

**21.** The final word must be to congratulate [the respondent] on exiting wardship and to express a very sincere "thank you" to those providing such great care to him on a daily basis, in particular, Ms. B and her team.