THE HIGH COURT

WARDS OF COURT

[2024] IEHC 496

[WOC 9063]

IN THE MATTER OF M.A., A WARD OF COURT

RESPONDENT

***Ex tempore* ruling of Mr. Justice Mark Heslin delivered on the 26th day of July 2024**

1. The application concerns a lady aged 39, admitted to wardship, for whom the general solicitor acts as committee.

2. According to the reporting, the respondent has a diagnosis which includes moderate learning disability, down syndrome and generalised anxiety disorder.

3. The original application to this Court arose from very serious concerns of neglect and lack of safety in the home environment. This ultimately resulted in the respondent moving to a residential placement, pursuant to orders which, *inter alia*, permit the manager of the placement to regulate access with her parents. Visits continue, as I will presently come to.

4. The court's orders also prohibit the respondent's parents from coming within a certain distance of either the relevant day-service or the home of the respondent's sister during times when the respondent is visiting there.

5. The most recent order by this Court was made on 20 February 2024 when it was determined that the respondent is in fact detained and a part 10 review under the provisions of the Assisted Decision-Making Capacity Act 2015 was scheduled for today. On 20 February, under the court's wardship jurisdiction, it continued the orders I have referred to which provide that the respondent continue to reside at a placement with a certain residential services provider.

6. The orders also prohibit interference with the placement and, in the manner I have touched on, permits the placement manager to regulate access, as well as authorising the assistance of An Garda Siochána to secure compliance with the court's orders.

7. For the purpose of today's review, I have the benefit of written reporting from independent consultant psychiatrist (the "ICP") Dr. C, who assessed the respondent on 5 July 2024.

8. Dr. C's report states, *inter alia,* the following which concerns both the respondent's welfare and the detention aspects: "*In my opinion* [the respondent] *is being very well cared for in her current placement. She avails of a comprehensive individualised treatment plan which is designed to meet her personal, social, physical, physiological and healthcare needs. There is*

also a carefully monitored and well documented plan in place to facilitate her contact with her family."

9. Later Dr. C summarises matters by stating:

"*She is clearly benefiting and being extremely well cared for in her current placement. In my opinion, failure to detain her in the placement would be likely to lead to a serious deterioration in her condition, as it would prevent the administration of the appropriate care and treatment which is alleviating her condition to an extent and facilitating her to reach her full potential. Whilst she expresses a desire to return to reside with her family, it is clear from the information available to me that this would not benefit her. While* [the respondent] *has a significant intellectual disability and a mood disorder and is under the care of a consultant psychiatrist in intellectual disability as an outpatient, in my opinion she does not meet the criteria for a mental disorder as defined in the Mental Health Act 2001, given that she is satisfactorily receiving her care and treatment outside of an approved centre*"

10. I pause to say that in this written report it seems clear that the underlying reason proffered by the ICP as to why the section 3 definition is not met, hinges on the fact that the respondent is receiving necessary and appropriate treatment, not in an approved centre, but outside of an approved centre in her current placement, and as we are all aware that speaks directly to the *second* element of the section 3 definition, namely, as found in s.3(1)(b)(i) and (ii) OF THE Mental Health Act 2001.

11. However, the ICP also includes reporting which seems to me to speak directly to the *first* of the two elements in the s.3 definition, namely, the element dealt with in s.3(1)(a) which relates to immediate risk of harm to self or others. I say this because elsewhere in her written report Dr. C states, *inter alia, "from time-to-time her behaviour can quickly change and she becomes disruptive and threatening*." Later stating "*she has particularly difficulty with the next door neighbour towards whom she is hostile and abusive. She has thrown objects over the garden wall. Staff think that she is envious of these neighbours. Her abusive behaviour towards her neighbours has put her placement at risk."* Staff also describe how, when she goes out in public, [the respondent] can become very disruptive e.g. in her local church and supermarket. "*She tends to feel that people are staring at her and she becomes disruptive, aggressive and shouts at people. She then has to be removed from the situation*." That has recently happened in her local supermarket.

12. In relation to restrictions in place, Dr. C goes on to say:

"*Both the front and back doors of the placement are locked in order to prevent her leaving the house without being accompanied. There are alarms on both doors to alert staff of anyone entering or leaving the house. The back garden is secured and she is supervised there as she has thrown objects over the wall at her neighbours. Knives are locked away as she has threatened staff with knives.*"

13. Later, Dr. C states "*given her level of intellectual disability she does not have the capacity to make decisions regarding her healthcare, financial matters or her placement. She lacks insight into the consequences of her disruptive and aggressive behaviours in various social situations e.g. her local church and supermarket and in relation to her next-door neighbour*."

14. The respondent's treating or responsible consultant physiatrist (the "RCP"), Dr. E, provided reports dated 5 March, 24 June and 19 July, all of which I have very carefully considered. In his June report Dr. E. states, *inter alia,* the following as the rationale for the detention and close supervision aspects of the court's current orders:

> "*The detention orders need to remain given the risks involved.* [The respondent] *continues to pose a risk of verbal abuse and agitation towards her neighbours and possibly further escalation without staff intervention. She is also at risk of going absent without leave, without staff, oversight and supervision, and this places her at risks in the community, such as those of traffic, her being vulnerable and others being vulnerable from her*."

15. He goes on to state at the end of the 24 June report:-

> "*In my opinion* [the respondent] *meets the criteria for a mental disorder as per s.3(1)(a) of the Mental Health Act 2001.* [The respondent] *has a significant intellectual disability and aggressive behaviour. Without her current community based care package including restrictions she would:-*
>
> *(1) Be an immediate risk to herself through not seeing and negotiating risks, such as traffic, or addressing needs such as hunger and the requirement to prepare or purchase meals;*
>
> (2) *Pose an immediate risk to others, including the use of weapons*."

16. In his most recent addendum report, Dr. E confirms that having reflected on the ICP's report he remains of the view that the respondent meets the criteria for mental disorder stating:-

> "[The respondent] *has a moderate intellectual disability, a state of arrested or incomplete development of the mind. She also presents with abnormally aggressive or seriously irresponsible conduct in the form of aggression, attempting to disengage from staff and supervision and threat-making. Despite meeting both criteria and therefore having a mental disorder, there is a less restrictive option in place as there is with many people who have an intellectual disability. This involves remaining in her current accommodation with the current restrictions in place. In my view the current care plan and legal framework achieves the dual function of giving* [the respondent] *the best quality of life possible whilst keeping her and others safe*." (emphasis added)

17. I pause to say that the statement that "*both criteria*" are met is very obviously a reference to both s.3(1)(a) and s.3 (1)(b) being met, although in respect of the latter there is an acknowledgment that this is not an approved centre and also it is clear that Dr. E is of the view, shared by the ICP, that it would not be in the best interests of the respondent or

necessary or appropriate to admit her to an approved centre. Nonetheless, there is a clear view expressed by the RCP that s.3(1)(a) of the definition is met and, as I touched on earlier during the helpful submissions made, the definition is disjunctive. S.3(1)(a) terminates with the word "*or*" and that seems to me to be very important in the manner in which the court must approach the evidence given today, and resolving the conflict, or preferring certain evidence over other.

Oral evidence of the RCP

18. I now turn to the oral evidence given, Dr. E confirmed that he adopted his reporting as his evidence. He also made clear that the respondent would find the review process very distressing and very difficult and he remains in support of the provisions included in the February 2024 order, which allow for reviews in the absence of the respondent. He made clear that the respondent's intellectual disability is at a moderate level. To translate that, he explained that it is of sufficient severity to have a significant impact on the respondent's intellectual functioning and social engagement. Dr. E is someone who has known the respondent for many years. He confirmed that he first met her almost a decade ago when she was attending a day service in a state of what he described as "*incredible neglect*". He gave examples, including the respondent attending her day service from home with skin conditions and often covered in excrement. His evidence was that when she lived at home she was not aware of, or able to keep herself safe from, violence occurring in the home environment. His evidence was to the effect that she had, and has, no idea of how to prevent herself from becoming ill or to keep herself safe. He confirmed that she is always supported in the community and went on to say that if the respondent had access to the community, unsupported, she is likely to come into conflict with members of the public. He also made clear that her awareness of risks including traffic and the dangers presented from that is limited. His evidence also included to say that the respondent has threatened members of staff at times with cutlery which was deployed as weapons. She has also thrown items into her neighbour's garden and been threatening to neighbours. His evidence was clearly that her intellectual disability is such that it places herself and others at significant risk and the thrust of his evidence was that the immediacy requirement in s.3(1)(a) is met.

19. In Dr. E's view, the way the respondent has always presented meets the threshold for mental disorder. Speaking directly to s.3(1)(b) he made clear that the less restrictive community option which involves the current restrictions is more appropriate but, given the level of risks that the respondents presents, he was very clear that the existing restrictions remain necessary. He very much understood Dr. C's perspective but equally made clear that taking away the current restrictions, the respondent would meet the definition of mental disorder. He confirmed that to the best of his knowledge the respondent has never been admitted to an approved centre. His evidence was that approved centres would generally cater for people who are much 'higher functioning' than the respondent and that it would be detrimental to her were such an admission to take place. He emphasised that the effort has always been made to

support the respondent in the community and she continues to require the current supports provided for in the orders.

20. In relation to my question which was a specific one as to whether in his view s.3(1)(a) was met. Dr. E's evidence was to the effect that if the respondent were not availing of the current placement, including the restrictions and supports facilitated by the current orders, there is a serious likelihood of causing serious harm to self or others.

Oral evidence of ICP

21. I am also very grateful to Dr. C whose evidence included to say that, in her clinical opinion, the respondent suffers from moderate intellectual disability. She went on to say that in the event of the restrictions currently in place not being in place, "*of course the respondent would be at risk*" and she gave examples including risks from traffic and risks as a result of being threatening and aggressive to members of the public. Dr. C's evidence including to say that the respondent is "*definitely*" at risk without the restrictions. She also made clear that the respondent is a possible risk to other persons and that this view was based on previous experiences of the respondent's engagement in the community. Dr. C referred to threats to members of the public for no apparent reason made by the respondent.

22. The core of her evidence in relation to why she held the view that the respondent did not meet the mental disorder definition in s.3 was, essentially, to say that the respondent never had a mental disorder because she was never admitted to an approved centre. That, of course, speaks to the second element of s.3, namely, the s.3(1)(b) definition. The ICP made clear that she regards the current placement and the current package of extensive supports including restrictions as entirely necessary.

23. In response to my questions which focused on the s.3(1)(a) element, Dr. C explained her position by stating that the concept of "*immediacy*" or "*immediate*" is difficult to define. Based on her experience engaging with the Mental Health Act 2001, her understanding was that immediate risk needed to be imminent risk and, in the present case, she could not say if the risk was imminent. I explored that issue directly with Dr. C and in response to my questions her evidence was that without any supports, in other words without the supports and restrictions currently in place, the respondent would be at risk possibly "*within hours*." This was in response to a proposition I put to the ICP i.e. were she to assess the respondent as she presents, but without the existing supports and restrictions, did Dr. C have a view in relation to whether risk would present to self or others within years, months, weeks, days or hours? Her evidence was very clearly that it could arise as soon as a matter of hours. That does seem to me to safely allow for a finding that the s.3(1)(a) definition is met.

24. The evidence before the court seems to me to be sufficient to meet the immediacy threshold however that is interpreted. I simply cannot conceive of risk which will arise, possibly within hours, as being other than immediate.

25. Returning to the other element of today's review, which concerns welfare, I have the benefit of reporting of the 7 February, prepared by Ms. K, social work team leader and Dr. P, head of psychology, which provides a clear rationale for the restrictive elements in the current orders.

26. I also have the benefit of a 4 July report by the respondent's guardian ad litem, Ms. F, social worker, who provides a detailed update on developments during the review period.

27. In essence, the respondent is reported to continue to thrive in her placement and access with family is being supported in a very appropriate manner. The respondent is someone who continues to enjoy the comforts of a homely environment in her placement. She is able to leave the placement, daily, with staff support to engage in a range of activities in the community. Her physical condition is reported to have improved greatly since moving to the placement from the home environment. There is a particular focus on physical health and activity of benefit to the respondent.

28. The guardian ad litem provides a very detailed update in relation to physical health, mental health and input from, *inter alia,* psychology and speech and language therapy, as well as other multi-disciplinary team supports.

29. The respondent's expressed wish is very carefully taken into account by this Court and, in short, it is her expressed wish to return home. Despite this, she presented as happy and in great form in her placement when Ms. F last met with her. Unfortunately, the reporting discloses that despite preparatory work done with her parents, in particular around not discussing a return home during access visits, this remains an issue; and it is reported that her parents are not able to give the respondent the permission to settle in her placement and enjoy her life there, because they want to have her home. Ms. F further reports that her parents do not accept the concerns for the respondent's welfare which arose prior to her admission to wardship and do not take any responsibility in that regard.

30. The very positive reporting from Ms. F includes the recommendation that the respondent requires ongoing protection in this placement and that the existing court orders should remain in place because they offer what Ms. F describes as "*much-needed protection*" for her.

31. A positive picture also emerges from a welfare perspective in the 3 July report authored by Dr. P as head of psychology, and Ms. M, principal social worker.

32. A very detailed account is given in relation to the respondent's residential and day service; her health; her contact with various family members; and her care plan. A clear sense of the respondent also comes through the reporting. It is important not to lose sight of the fact that this review, as in every review, is dealing with not only a vulnerable person who may pose risks to self or others, but a very real individual who has like all of us a '360 degree' presentation. The authors state:

> "[The respondent] *has a friendly a fun-loving personality and a great sense of humour. She has positive relationships with the staff who support her. The staff have come to know*

[the respondent] *very well and they have a consistent approach in working with her which* [the respondent] *responds positively to. At times* [the respondent] *does display behaviours that challenge including aggressive behaviours. A protocol is followed in supporting* [the respondent] *when she is distressed."*

33. The authors' report and recommendations provide a very clear basis for a continuation of the current orders and they include to say, and the following speaks to the appropriateness of the continuing supervision and restrictions around visits as well as the restrictive orders in relation to supervision in the community etc: "*It is hard to articulate clearly the level of diligence and oversight that is needed at access visits by staff and the multi-disciplinary team in order to prevent situations escalating such as talking about the High Court.*"

34. The authors go on to state:

"[The respondent's] *mental health remains under review and she can at times behave in a way that could potentially cause harm to herself or others, for example, absconding from the house or threatening staff with a knife and making unfounded accusations against staff and members of the community.* [The respondent's] *mental health presentation is very complex and is influenced heavily by her past experiences and this is an area where* [the respondent] *continues to require and receive ongoing significant support*."

35. To draw the analysis of the evidence to a conclusion, I also have the benefit of an affidavit sworn yesterday by Ms. H, solicitor, engaged by the committee and also acting as independent solicitor for the respondent. Ms. H details her meeting with the respondent which took place on 22 July in her very comprehensive report of the 23 July. Given the level of distress which reviews cause to the respondent, and reflecting both the provisions in the 20 February order and the clear evidence given today by Dr. E, Ms. H indicates that she did not inform the respondent of the date of the review in relation to welfare or detention aspects. However, it is clear that Ms. H discussed the reporting in an appropriate way given the respondents level of functioning and also ascertained her views. I am taking full account of the expressed views of the respondent through the reporting by Ms. H which are that she does not like living in the placement; she does not like her neighbours; she misses her mother and wants to go home.

36. I entirely agree with the submission made by Ms. H in her report that no possible injustice arises in light of s.139 of the 2015 Act by proceeding with today's welfare and detention aspect reviews in the absence of the respondent but, of course, fully conscious of her views and with the benefit of reporting, not only from her guardian, but from someone fulfilling the role as independent solicitor and acting for the committee. It is also fair to say that the reporting, when it is analysed closely, reveals a consensus i.e. that this is a respondent who doubtless has many strengths and a warm personability but, as a result of her presentation, poses an immediate risk to self or others and that those risks are managed in a very appropriate way which maximises her autonomy, and this is facilitated by the current restrictions in place.

37. I have no hesitation in saying that the appropriate response by the court, today, is to continue the detention aspect under s.108 on the basis that s.3(1)(a) is satisfied; and the welfare orders, those of a non-detention aspect, plainly remain appropriate, necessary and very much in the best interests of the respondent.