THE HIGH COURT

WARDS OF COURT

[2024] IEHC 497

[WOC 9933]

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

RESPONDENT

***Ex tempore* ruling of Mr. Justice Mark Heslin delivered on the 29th day of July 2024**

1. This application concerns a gentleman of 48 and, according to the reporting before the court, he is someone with very complex needs and a complex presentation. His diagnoses include mild to moderate intellectual disability, autism spectrum disorder, obsessive compulsive disorder and schizoaffective disorder. The evidence before the court makes clear that a feature of the respondent's presentation can include dysregulated behaviours, including aggressive behaviours.

2. The respondent was admitted to wardship on 14 August 2019 and the General Solicitor is his committee. On 4 March 2024 the court ordered that the respondent continue to reside and be detained at [the placement]. Those orders were made following an application under s.108 of the Assisted Decision-Making Capacity Act 2015 ("the 2015 Act"). A suite of orders was made in relation to the provision of treatment and care to the respondent in his best welfare interests. Those orders come before the court today for further review.

3. In that context, I have the benefit of reporting from independent Consultant Psychiatrist Dr F, who assessed the respondent on 23 May 2024. The following extracts from Dr F's report are particularly relevant both to the issues of welfare and detention pursuant to the orders the subject of today's review. Under the heading risks, Dr F states:-

> *"The respondent has a significant history of violent threats, physical aggression, sexual aggression, absconding and of making false allegations. These behaviours have reduced greatly in the past few years with intensive and consistent behavioural support, a specialised residential environment and restrictions on his freedom. There was no evidence at present of an acute risk of serious violence, but the risk of aggressive behaviours can quickly become high during times of stress and heightened anxiety."*

4. In analysing whether the respondent is suffering from a mental disorder, as defined in s.3 of the Mental Health Act 2001, Dr F goes on to state, *inter alia*:-

> "[The respondent] *does have a mild to moderate intellectual disability, autistic spectrum disorder and a personality based tendency towards violence when stressed. In my view, this does not constitute a mental disorder as defined in the Mental Health Act 2001. In my opinion, admission to an approved centre at present would be harmful to* [the respondent]

and would increase risks to him and others. The serious risk of aggression and other behaviours described above are being very appropriately and expertly managed in his current environment through his current care plan. While [the respondent] *is not in my opinion suffering from a mental disorder, the current legal restrictions on his freedom remain appropriate as without them his risk of violence towards others would quickly and seriously escalate."*

5. I pause to say that the definition in s.3 of the 2001 Act has two distinct elements. The definition is a disjunctive one in circumstances where sections 3(1)(a) and 3(1)(b) are separated by the word "*or*". Section 3(1)(a) states:

"In this Act mental disorder means mental illness, severe dementia or significant intellectual disability where (a) because of the illness, disability or dementia there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons or…" and the section 3(1)(b) definition is then set out.

6. Returning to the ICP's very comprehensive and careful reporting, whilst Dr F expresses the view that s.3 is not met, the focus of his analysis seems to me to be exclusively through the lens of s.3(1)(b), rather than with a focus on s.3(1)(a). I say that because it is clear that the ICP is of the view that the respondent has a mental illness or disability within the meaning of the Act and that aggressive behaviours can escalate quickly and that without the current restrictions the risk of violence towards others would escalate quickly and seriously. In my view, this allows for a finding that s.3(1)(a) of the definition <u>is</u> satisfied. That is a finding which I make today having considered the entirety of the evidence, including evidence from the responsible Consultant Psychiatrist Dr A, and I will presently come to her reporting.

7. Dr A has been the treating consultant psychiatrist for some thirteen years, since 2010, and she conducted the most recent assessment of the respondent on 4 July 2024. In Dr A's view the respondent suffers from a mental disorder within the meaning of s.3(1)(a). Her affidavit, affirmed on 4 July 2024, contains, *inter alia*, the following averments which speak to the questions of capacity and the necessity for current orders in the context of the likelihood of causing immediate harm to self or others were it not for the current restrictions authorised by the existing suite of orders. At para. 25 the following averment is made:-

"The respondent lacks the capacity to understand decisions that involve higher functioning with limited understanding of his own responsibility and the consequences of his actions. In particular, he is incapable of living independently and caring for himself on a day-to-day basis and lacks the capacity to make necessary decisions concerning his care, habitation and treatment needs."

8. Later it is averred at para. 26 that the impairments to the respondent's function are such that:-

"He requires for his own protection, and the protection of others, continuous supervision and care and appropriate medical treatment in his own interests, and in the interests of other persons."

9. At para. 27 the responsible consultant psychiatrist avers, *inter alia*:-

> *"The respondent presents with a clear, immediate and serious risk of violence to others as is evidenced by his ongoing sexualised behaviours and threatened sexualised behaviours towards others and verbal threats and physical aggression towards others. The respondent is also at risk of serious harm to himself due to his lack of road safety awareness. If not detained he would be at immediate risk of misadventure from reprisals arising from the consequences of his own behaviour towards others. These risks are only currently mitigated by the very specific risk management measures put in place in a highly supported and observed care setting such as provided in his current placement."*

10. At para. 31, the treating consultant psychiatrist avers that the respondent continues to meet the criteria for wardship, and it is further averred that the respondent lacks capacity to manage his own financial affairs and, without protective measures in place, would be vulnerable and open to exploitation. At para. 31 Dr A avers:-

> *"I say that it is both necessary and appropriate for* [the respondent]*'s own safety and wellbeing and for the safety and welfare of others that he should be detained in* [the placement] *so as to provide for his continued care and habitation.* [The placement]*, is in my opinion, a suitable placement that provides specialised bespoke care for* [the respondent]*'s complex needs."*

11. In addition, I have the benefit of a detailed report from the placement in the form of the reporting of 18 June 2024 provided by Mr C and Ms G, clinical nurse manager and social worker, respectively. This very comprehensive welfare update includes the following:-

> "[The respondent] *has behaviours of concern. Risk assessment continues to reflect a medium risk category with the existing control measures in place, with a high impact score.* [The respondent]*'s diagnosis of schizoaffective personality disorder and ASD continue to be supported through a multidisciplinary team lead positive behaviour support plan. If incidents occur these are reviewed robustly, and the plan is adjusted accordingly."*

12. Later, and speaking to welfare, the report states:-

> "[The respondent] *continues to have a relatively low level of activity and will frequently decline offers of new activity or ideas on which to engage in. He continues to work with a dedicated activity support staff on a one to one basis and this has seen improvements in areas such as meal preparation, relaxation, flower arranging and art activities."*

13. Later it stated:-

> *"Day staff continue to explore additional activities in this area."*

14. Later still:-

> *"Since the last report,* [the respondent] *continues to engage in household activities such as laundry, garden planting and meal preparation.* [The respondent] *has historically low levels of activity participation, so this is a positive development. Activities such as bus*

drives to [a toy shop]*, or shop for other favoured items or getting his favourite takeaway continue. However,* [the respondent] *currently declines to get off the bus in all locations except for* [the toy shop]*. When he declines to leave the bus he will request staff to go into the shop or takeaway for him ,which he is accompanied at all times."*

15. I also have the benefit of reporting from the respondent's independent solicitor, Mr David Hickey, who furnished an affidavit, today, detailing his meeting with the respondent which took place on 26 July 2024. Mr Hickey reports that the respondent looked well and he details his discussion with the respondent, which focussed in particular on toys and models he had purchased. Mr Hickey's affidavit includes the following averments.

"*I note there remains a difference of opinion between* [Dr A] *and* [Dr F] *as to whether* [the respondent] *suffers from a mental disorder as defined in s.3 of the Mental Health Act 2001. However, there is no difference in substance between the respective consultants regarding* [the respondent]*'s complex presentation or his ongoing need to be cared for in a bespoke placement in* [the placement] *and to be the subject of court orders and reviews. As is clear from the evidence tendered in this case,* [the respondent] *is incapable of engaging with these issues and any attempt to do so would likely lead to adverse consequences.* [The respondent] *continues to be exceptionally well cared for at* [the placement] *Centre and he is appropriately placed there. The committee support the HSE's application to continue the orders as being both necessary and appropriate having regard to the Ward's constitutional right to life, liberty and bodily integrity."*

16. To draw this ruling to a conclusion, in the manner I have tried to explain, it seems to me that there is no difference in the factual position as identified by both the independent consultant psychiatrist and the treating consultant psychiatrist. Rather, on the basis of the same facts, a different view is expressed in relation to whether s.3 of the 2001 Act is met. For the reasons I have explained, I am satisfied that the substance of the ICP's report, considered alongside the report of the treating consultant psychiatrist, allows for a finding that the s.3(1)(a) definition in the Mental Health Act 2001 is met.

17. Therefore, it is appropriate to continue the detention order for no more than 6 months, subject to further review in accordance with s.108 of the 2015 Act. As to the non-detention orders which concern treatment, care and welfare, the evidence allows for a finding that they remain appropriate, necessary and in the best interests of the respondent, subject to further review on the same date.