THE HIGH COURT

WARDS OF COURT

[2024] IEHC 498

[WOC 9151]

IN THE MATTER OF W.D., A WARD OF COURT

RESPONDENT

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

1. This application concerns a gentleman, aged 37, who was admitted to wardship in July 2017, the general solicitor being committee of his person and estate.

2. According to the evidence before the court, the respondent's diagnosis include schizophrenia, significant mood disorder, emotionally unstable personality disorder and mild intellectual disability. Features of his presentation can include paranoid delusions and aggressive and assaultive behaviours. The background also includes the breakdown of a number of residential placements since 2019.

3. Far more recently, on 15 February 2024, a review took place in accordance with part 10 of the Assisted Decision-Making Capacity Act 2015, following which this Court continued the respondent's detention at a placement called [redacted] and a suite of orders were made in relation to his care and treatment in his best welfare interests. Of significance is that these orders, *inter alia,* permit temporary transfer of the respondent to an approved centre if deemed clinically necessary and the orders facilitate a return to what Mr. Leahy SC, counsel for the independently solicitor, accurately describes as his "default placement" in [redacted].

4. Today, I have the benefit of reporting of the 27 April by independent consultant Dr. W. Dr. W's report states *inter alia* the following:-

> "*He has attachment trauma, post-traumatic stress disorder, emotionally unstable personality disorder, psychotic symptoms and borderline intellectual disability. He has a history of significant self-harm and dipropionate aggression to others when emotionally dysregulated. The structure and predictability provided by his multi-disciplinary team in* [the placement] *contains him when he has difficulties containing himself emotionally. He responds best to familiar staff and finds changes in staff difficult. He deteriorated in a lower supported setting. He seems to have benefited from the higher support of two-to-one staffing.*"

5. Under the heading of "mental state examination" Dr. W states, *inter alia:-* "*He complained of ongoing banging sounds outside his room which was quiet. This banging iS day and night and*

disappears when he goes on car trips. These seem hallucinatory in intensity and they preoccupy and distress him."

6. The position is summarised by the independent consultant psychiatrist (the "ICP") in the following terms:-

> "[The respondent] *has ongoing treatment-resistant psychotic symptoms and emotional dysregulation propensity. He appears to be benefiting from his current care plan in* [the placement]*. In my opinion, he would not benefit from transfer to an approved unit under the Mental Health Act as he is well managed in his current residence and a move would dysregulate him. Because of the above, despite the presence of a mental illness he does meet the legal definition of mental disorder as defined in the Mental Health Act 2001*."

7. It seems to me that certain observations can fairly be made of this reporting. First, the reason the ICP appears to take the view that the definition of mental disorder is not met seems to relate exclusively to the substance of s.3(1)(b) of the Mental Health Act 2001 and hinges on the fact that the respondent is benefiting from treatment in a non-approved centre, namely, [redacted]. Second, Dr. W does not offer any specific view in relation to s.3(1)(a) of the s.3 definition. Third, the substance of her report seems to me to speak to that first element of the second s.3 definition. This is in circumstances where the ICP refers, *inter alia,* to significant self-harm and to disproportionate aggression to others when emotionally dysregulated. In the manner I will presently come to, since the ICP reported in April, the respondent's mental health has, in fact, deteriorated. He has, in fact, sustained injuries due to self-harm and there has been a further update in submissions made by counsel today, to the effect that the respondent is, in fact, temporarily in an approved centre.

8. What I am about to say is also intended as no criticism of the ICP's reporting, in this case or in any other case. However, the following observations do seem to me to be important. Section 108(5) of the 2015 Act states:- "*The wardship court, when reviewing a detention order, shall hear evidence from the consultant psychiatrist responsible for the care or treatment of the person concerned and from the independent consultant psychiatrist*." I will presently come to the reporting from the responsible consultant psychiatrist (or "RCP") Dr. S. However, s.s. (6) goes on to specify the function of the ICP, namely, "*to examine the person concerned and report to the wardship court on the results of the examination, in particular whether, in the opinion of the psychiatrist, the person concerned is suffering from a mental disorder*."

9. Section 6(6) refers <u>only</u> to the ICP, its does not refer to the responsible treating consultant. Yet this subsection ascribes to the ICP an extremely important function i.e. the function of reporting to this Court on whether, in their opinion, the person is suffering from a "mental disorder". Given that the definition of mental disorder has all the elements which the Oireachtas chose to set out in s.s. 3(1)(a) and (b)(i) and (ii) of the 2001 Act, the reporting role ascribed by the Oireachtas to the ICP is best discharged by reporting which addresses <u>all</u> aspects of the statutory definition, and does so explicitly. Similar comments apply to reporting by an RCP, from whom the court "shall hear".

10. Reporting of that type would certainly be of more assistance to this Court in the role which the court has been tasked by the Oireachtas with carrying out namely, the conducting of meaningful 'part 10' reviews, whether under s.107 or, in this case, s.108. I make these observations not least given the sheer number of reviews which this Court has to engage with very carefully and that is very obviously so, given the significant issues at play. They could hardly be more significant, given that they touch on the liberty and autonomy of, often, very vulnerable persons.

11. In today's list alone, which comprises of 9 cases, 6 of them concern intensive reviews by this Court of orders trespassing on liberty and, of those, 4 comprise s.108 reviews. Again it is no criticism but it is the case that the reporting does not in every case address *every* aspect of the s.3 definition. I emphasis, yet again, this is no criticism of anyone, but it is, I think, an appropriate message which arises from the functions the Oireachtas has given to the various 'players', i.e. the RCP, the ICP and this Court.

12. To return then to reporting before the court in this specific review, I have the benefit of a report from the RCP, Dr. S, who swore an affidavit on 23 July exhibiting what is a very detailed report of 15 July. Dr. S opines, *inter alia,* that the respondent lacks capacity on a functional assessment to make decisions concerning his health, his care, his well-being, his living arrangements and his welfare needs. The reporting sets out in great detail the reasons why the consultant psychiatrist treating the respondent is satisfied that the s.3(1)(a) definition is met.

13. In the manner which Dr. S outlines, the history of harms to self are of the most grave kind and its appropriate to refer to certain averments made by Dr. S, which include the following.

> "*I say that recurrent relapse is the pattern of his illness to date and* [the respondent] *can present with behaviours that challenge. Since the last review date of 15 February 2024 there have been 8 significant incidents which I have addressed in some detail in my medical report. The respondent's aggression and challenging behaviours have presented in both a physical and verbal manner. His compliance with prescribed medication and his care plan has also fluctuated since this matter was last before the court on 15 February 2024. I say that on each occasion where the respondent engaged in risk taking behaviour, positive interventions by staff in the placement de-escalated the aggression and the respondent's behaviour has not warranted an admission to an acute hospital. The respondents' needs can exceed the capacity of* [the placement's] *care services at times and therefore, when it is in his best interests, the placement will transfer him to a hospital to meet his acute care needs.*"

14. I pause to say that since that affidavit was sworn, the respondent has required admission to an approved centre and he is temporarily there as we proceed with this ruling today.

15. Dr. S also makes the following averments:-

"*It is my opinion that the continued risk-mitigation measures, designed to reduce the ability of the ward to damage property, and the use of reasonable force and restraint to prevent him causing injury to himself and others remain necessary. The treating team at* [the placement] *closely monitor the risks to himself and other people. It is my opinion that* [the respondent] *remains a potential future risk to both himself and others, due to recurrent relapse which has been the pattern of his illness to date. The period of relative stability is because the staff team have been alert, rapid and consistent in managing the risks to both himself and staff in a safe, prescribed and consistent manner and thus facilitating a good quality of life for the respondent.*

…due to his mental illness and disability there is a serious likelihood of him causing immediate and serious harm to himself or to others if his current restrictive court orders are not in place. In my opinion, due to the severity and nature of [the respondent's] *mental illness, combined with his high risk of non-compliance with treatment in an unsupervised setting, he is at a high and immediate risk of serious violence to others and also at immediate serious risk of serious harm to himself.* [The respondent's] *extensive history of serious violence has been previously outlined and his unpredictability and impulsivity in his behaviour makes such behaviour an immediate risk if he were to be discharged from the placement. Even in his current highly supervised and restricted placement, where he is receiving treatment by staff specially trained in the prevention and management of violence, it has not been possible to eliminate ongoing acts of physical violence as set out in my report.*"

16. In the manner I will presently come to, those averments find unfortunate expression in further evidence before the court of actual harm to self caused by the respondent, which would appear to have occurred in the recent past.

17. I also have the reporting from the person in charge of the placement Mr. J, social worker, and it is reported that, since the last review, the respondent has had some deterioration in his mental health. Among other things, the report confirms that the respondent engaged in 8 incidents of challenging behaviour which included verbal aggression, damage to property, self-harm and assaultive behaviour.

18. It is further reported that the respondent continues to require 2-1 staffing to manage such episodes. This evidence seems to me to reflect the substance of the ICP's report, wherein the ICP referred to harms to self and others when emotionally dysregulated. It is also clear from the reporting that, despite input from the behavioural specialist and the implementation of a traffic light system (whereby staff will dynamically risk-assess the respondent and indicate to him where he is on the traffic light system), risks of harm (including harm to self) can arise over a very short period. Indeed, the *dynamic* nature of measures to try and respond to and de-escalate behaviours, which pose a risk to self or others, seems to me to speak directly to the *immediacy* element of the s.3(1)(a) definition.

19. As regards positives offered by the respondent's current placement, and his quality of life when not unwell from a mental health perspective, it is appropriate to quote as follows from the social work report.

"[The respondent] *will complete his weekly planner on a Friday for the next week and decide on activities he would like to complete. He currently goes to the cinema on Mondays and Saturdays and has day trips planned for Wednesdays and Sundays.* [The respondent] *will also access local parks for walks or leisure such as* [locations named]*.* [The respondent] *has joined a gym, he attended the induction however he has not attended since. This is mainly due to* [the respondent]*'s poor meatal health at the time of joining. It is also hoped that* [the respondent] *will join the* [placement service]*. Additional independent skills have been implemented to the planner.* [The respondent] *has reinforcers in place to help achieve his goals, his most recent reinforcer is a trip to go go-carting.* [The respondent] *is slowly working towards this and is making progress."*

20. The social worker's report concludes by summarising what was the position as of the 22 July 2024:-

"In the last 3 months we have seen a decline in the mental health of the respondent. This is being closely monitored by the multi-disciplinary team. His medications have changed at his request, he continues to engage in his planner when he is mentally well. [The respondent] *will complete his community access, go to the shops, see his friend,* [redacted] *and go on day trips.* [The respondent], *on days when he is in good form, is motivated to engage in his reward chart and has made great progress on this over the last 3 months. Staff continue to support* [the respondent] *when he is experiencing paranoid thoughts and offer him with reassurance. Staff will continue to follow the pre-active reactive strategies outlined in the MEBSP."*

21. MEBSP refers to the 'multi element behaviour support plan', the details of which are given in the report."

22. The final element of the evidence before the court, today, comprised detailed reporting from Ms.H, who is instructed by the committee and also performs the role of the respondent's independent solicitor for today's 'part 10' review. She details her interactions with the respondent, on 20 July 2024, when he reported to her that he was going through a "*bad phase of schizophrenia at the moment*" and hearing banging noises. Ms. H reports that the respondent's paranoia is usually about staff, the placement, and his food. He can believe his food is poisoned and he stops eating in his residence.

23. Ms. H reports that the respondent assured her that he was not paranoid, but went on to say that the brownie he was eating during their meeting was the only food he had eaten in the last 5 days. Ms. H reports in some detail on the significance of what she witnessed. She explains that this is something she has observed a number of times over the past few years and something which the placement need to manage carefully because the respondent, as Ms. H

explains, can become quite paranoid, and this can lead to self-harming and also seeking to harm staff.

24. She reports on what the respondent had to say about a recent visit to his friend, following which his behaviour escalated on return to the placement. The behaviour in question involved banging of his head and fists against a wall and it is understood that the behaviour was triggered by the mention, during the visit, of a particular family member. Ms. H's report also refers to the respondent having his hood up to hide bruising on the top of his head and she also reports that he had cuts to his knuckles. I pause to say that this is evidence of very real harm to self, which plainly occurred rapidly in the context of, sadly, a deterioration in the respondent's mental health.

25. Ms. H's very comprehensive report also reflects the complexities in family history and I mention this because it is very appropriate that this Court hear and take account of the respondent's expressed wishes, and one of the wishes expressed is to see family. However, Ms. H reports on where this wish and other behaviours fit in the context of the respondent's decline in mental health and mood.

26. It is very clear that Ms H explained the nature and implications of today's 'part 10' review to the respondent and his expressed wishes are: to leave his placement; to move to Dublin; to get a mobile phone to ring family; to say that he is not paranoid, but that he just does not feel like eating.

27. Ms. H offers her independent view, namely, to support the HSE's application to continue the current orders not withstanding the expressed wishes of the respondent, which she reports on so comprehensively. She makes explicit that, in her view, the placement could not continue to promote and protect the respondent's best interests, or fundamental rights (including his rights to life, to bodily integrity and equal access to necessary care and treatment) effectively if the placement did not have permission to detain him and the independent solicitor's report also covers the following issues:

> *"It would appear that* [the respondent] *may shortly be admitted to an approved centre if his mental condition deteriorates to the extent that* [his current placement] *are unable to hold him in the community. If this were to occur I would envisage a short stay in an approved centre and a return to* [his current placement]*. Whilst* [his current placement] *is not an approved centre, it is a highly secure residential unit and at only one remove from an approved centre, the current orders permit such an arrangement and I would support these orders continuing"*

28. The current order provides a 'bespoke' response by the court to meet the needs, from a mental health perspective, of the respondent, eloquently illustrated by the fact that, as Mr. McGuinness BL explains in his submission, an admission to an approved centre has been necessary as recently as this week.

29. On another issue which featured in the respondents expressed wishes Ms. H states the following:-

> *"With regard to* [the respondent]*'s request to purchase a mobile phone, I would ask that consideration be given to this request when his mental health has stabilized and he is fully medication compliant and this is tested over a period of sixty days. I would recommend that there would be a clear condition attached to the respondent having access to a mobile phone. Currently, I do not think he can manage the responsibility of having a phone as he is unable to comply with social boundaries such as regulating its use and, as recently as last week, he self-harmed. The risk of* [the respondent] *having a mobile phone is that he can break the phone and use it to self-harm. Currently I would envisage that the risk is too high for the placement to manage."*

30. With apologies for the length of this ruling, it seems to me that, where there is a difference of view expressed in the evidence put before the court, it is necessary for the court to engage with it, with a view to try to resolve that difference, as I have tried to do here. It is also very appropriate that the court engage with the welfare evidence in the context of views expressed by someone the subject of orders which trespass on autonomy.

31. To draw this ruling to a conclusion, I want to express my thanks to Mr. McGuinness who moves the application today and Mr. Leahy who, on behalf of the independent solicitor, points out that there could be no disagreement as to whether the respondent suffers from a mental disorder in the current circumstances, given his recent admission to an approved centre, and the independent solicitor continues to support what is the 'default' placement but also continues to support what I have described as the 'bespoke' orders, to allow for a seamless transition, temporarily, to an approved centre and back to a placement meeting this needs.

32. Given the nature of the orders it is appropriate that they be reviewed, of course, and the 24 January was suggested.