

THE HIGH COURT

[2021] IEHC 366

[2021 No. 670 SS]

**IN THE MATTER OF AN APPLICATION UNDER ARTICLE 40.4.2 OF THE CONSTITUTION
BETWEEN**

P.C.

APPLICANT

AND

**PURPORTED JUDICIAL SUCCESSORS TO THE LORD CHANCELLOR OF IRELAND AND
OTHERS**

RESPONDENTS

JUDGMENT of Mr. Justice Meenan delivered on the 19th day of May, 2021.

Introduction

1. This is an application brought by the applicant challenging the validity of Orders made by this Court (Heslin J.) that his mother, A.C., now 98 years of age, remain an inpatient at St. Finbarr's Hospital, Douglas Road, Cork pending further Order of the Court. The applicant, over the last number of years, has initiated numerous proceedings in a bid to have his mother taken out of the said hospital. I refer to the following passage from the judgment of Ní Raifeartaigh J. in *A.C. v. Simon Harris & Ors* [2019] IEHC 933 where she stated: -

“--- [the applicant's mother] is a ward of court, having been admitted to wardship by the President of the High Court, Kelly P., on 19th August, 2016. The present application was initiated by her son, Mr. P.C., in what has now become a three-year legal battle by him to have his mother released from hospital. His efforts have to date encompassed at least four applications by him pursuant to Article 40.4.2 of the Constitution (one of which led to a written judgment by the High Court, Faherty J., on 3rd August, 2018 – see *A.C. v. Fitzpatrick & Ors* [2018] IEHC 570); two successful appeals by Mr. P.C. to the Court of Appeal (judgments delivered on 2nd and 30th July, 2018 respectively – see *A.C. v. Cork University Hospital & Ors* [2018] IECA 217 and *A.C. & Anor v. General Manager of St. Finbarr's Hospital & Anor* [2018] IECA 272); the initiation by him of plenary proceedings (currently the subject of a stay order made by the President of the High Court); and a Supreme Court decision delivered on the 17th October, 2019 (see *A.C. & Ors v. Cork University Hospital & Ors* [2019] IESC 73). Mr. P.C. was also the subject of attachment and committal proceedings at one point before the President of the High Court, and his appeal in respect of that process to the Court of Appeal was unsuccessful.”

2. The Orders which the applicant seeks to challenge were made by this Court on 27 January 2021 (Heslin J.) and 12 May 2021 (Heslin J.). These Orders, described as safeguarding orders, direct that the applicant's mother, A.C., would remain an inpatient in the said hospital. The Orders further provided, *inter alia*, that the applicant and his sister, V.C., would be prohibited from attending at or entering onto the grounds of the said hospital, be prohibited from photographing or making any audio and/or video recording of any person arriving at or departing from the said hospital and that any phone call to A.C. would be prohibited. The said Orders further provided: -

“[P.C.] and [V.C.] be at liberty to apply to discharge or vary this Order on 72 hours notice to the Court the Health Service Executive and the Committee.”

It will be noted that one of these Orders was made on 12 May 2021, the day after the applicant made this application under Article 40.4.2 of the Constitution on 11 May 2021.

3. In the course of his application before this Court, the applicant made clear that he was not challenging the Order of 12 May 2021.

Preliminary issues

4. The applicant made his application *ex parte* to this Court. I am aware that there has been previous extensive litigation concerning the applicant’s mother and, concerned that the within application might be an attempt to relitigate matters that have already been the subject of previous decisions of the Supreme Court, the Court of Appeal and this Court, I directed certain parties be put on notice of the application. These parties were the HSE, the General Solicitor for Minors and Wards of Court, the Committee of the Ward, Ireland and the Attorney General. In the course of moving his *ex parte* application on 11 May 2021, the applicant requested that I recuse myself from the hearing on the grounds of objective bias. This alleged bias arose from a decision of the Court of Appeal which overturned a decision I made in July, 2018 referring an earlier application by the applicant under Article 40.4.2 to be heard by the President, Kelly P., in the Wards of Court list. Clearly, my decision did not involve reviewing or considering the merits of the application so, in my view, no issue of bias, objective or otherwise, would arise. I am satisfied my decision not to recuse myself is in accordance with the principles set out by Denham J. (as she then was) in *Bula Ltd v. Tara Mines Ltd* (No. 6) [2000] 4 I.R. 412.
5. I also made an Order, which the applicant contested, pursuant to s. 27 of the Civil Law (Miscellaneous Provisions) Act 2008 prohibiting the publication of any matter likely to identify A.C. I made this Order as it was clear that the hearing would necessarily involve reference to highly sensitive and personal details relating to A.C.

The application

6. I heard the application over two days: 13/14 May 2021. As all the relevant parties were represented, I treated this hearing as being an inquiry under Article 40.4.2 as to the lawfulness of A.C. remaining an inpatient in the said hospital. The HSE produced to the Court a “*Certificate of Detention*”, dated 13 May 2021. This certified the grounds of detention of A.C. per the Orders of Heslin J. made on 27 January 2021 and 12 May 2021. It should be stated that the relevant provision in the Orders relating to the detention of A.C. are worded in precisely the same way, namely: -

“[A.C.] the Ward shall remain an in-patient at St. Finbarr’s Hospital Douglas Road Cork pending further Order of the Court”

7. The application was grounded on an affidavit of the applicant and a Statement of Grounds was provided. There is no reference to the hearing fixed for 12 May 2021 in either the grounding affidavit or the Statement of Grounds. The applicant maintained that he was not aware that this hearing was fixed for 12 May 2021 when he made his application

under Article 40.4.2 on 11 May 2021. When the Court enquired as to how this could be, a number of emails were produced by the parties on notice. Documentation evidencing the applicant being on notice of the hearing of 12 May 2021 was exhibited in an affidavit of Ms. Katharine Kelleher, Solicitor for the HSE. These consist of a letter dated 7 May 2021, stating: -

“... As you know this matter is listed for hearing in Four Court, Inns Quay, Dublin 7 on Wednesday 12th May 2021.”

There was a further email of 11 May 2021, at 10:27, attaching the papers that would be before the Court. In addition, there was an email from Mr. Brian Battelle of the Wards of Court Office on 22 March 2021 advising the applicant that the matter would be listed for hearing before Heslin J. on 12 May 2021.

8. Faced with these emails, the applicant maintained that he was unaware of the court hearing then scheduled for 12 May 2021. The applicant has repeatedly used emails as a means of communication without any apparent difficulty. Indeed, prior to making this application the applicant was in email contact with this Court. I am satisfied that prior to making this application the applicant was fully aware of the then pending hearing on 12 May 2021, but chose to ignore it and, instead of engaging in the said hearing, embarked on an application under Article 40.4.2. In so doing, had the Court not put the HSE and the General Solicitor for Minors and Wards of Court on notice this Court would have been unaware of the hearing then due on 12 May 2021. I can only conclude that, by proceeding as he did, the applicant deliberately and consciously attempted to mislead this Court. I refer to the following passage from the judgment of the Supreme Court given by O'Malley J. in *A.C. v. Cork University Hospital & Ors* [2019] IESC 73, where she stated: -

“However, it should be borne in mind that the judge who receives a complaint is not obliged to proceed to direct an inquiry if the complaint is manifestly baseless. The principles of abuse of the court's process apply to Article 40.4 as in any other litigation. ...”

I therefore conclude that this application under Article 40.4.2 is an abuse of process.

9. The applicant made clear that he was not challenging the Order of 12 May 2021, which provided for the detention of his mother in the said hospital. In the absence of such a challenge, the Court can only conclude that the applicant's mother is being lawfully detained as an inpatient in the said hospital.
10. As the applicant made a number of submissions concerning the validity of the Order of 27 January 2021, I will consider these submissions as, possibly, the same submissions could be made in respect of the Order of 12 May 2021. The test which the Court should apply on an application such as this was set out by Denham C.J. in *F.X. v. Clinical Director of Central Mental Hospital and Anor.* [2014] 1 I.R. 280, as follows: -

“(64) In general, if there is an order of any court, which does not show an invalidity on its face, then the correct approach is to seek the remedy of appeal and, if necessary, apply for priority. Or, if it is a court of local jurisdiction, then an application for judicial review may be the appropriate route to take. In such circumstances, where an order of the court does not show any invalidity on its face, the route of the constitutional and immediate remedy of *habeas corpus* is not the appropriate approach.

(65) An order of the High Court which is good on its face should not be subject to an inquiry under Article 40.4.2° unless there has been some fundamental denial of justice. In principle the appropriate remedy is an appeal to an appellate court, with, if necessary, an application for priority. Thus, the remedy under Article 40.4.2° may arise where there is a fundamental denial of justice, or a fundamental flaw, such as arose in *The State (O.) v. O'Brien* [1973] 1 I.R. 50, where a juvenile was sentenced to a term of imprisonment which was not open to the Central Criminal Court.”

I will now consider the application in light of the foregoing statement of principle.

11. The applicant challenges the statutory provisions that govern Wardship. He maintains that the jurisdiction in Wardship is dependent on that jurisdiction having been transferred from the Lord Chancellor to the High Court via legislation which he maintains was never validly commenced. A similar submission was made in the earlier application heard by Ní Raifeartaigh J., already referred to. In her judgment she stated: -

“... However, the Supreme Court has repeatedly made clear that the current jurisdiction in wardship was not *transferred* but rather was *vested* by s. 9 of the Courts (Supplemental Provisions) Act, 1961; see *In re D* [1987] IR 449, *In re a Ward of Court (withholding medical treatment) (no.2)* [1996] 2 IR 79, and *In re FD* [2007] IESC 26, *In the matter of F.D.* [2015] IESC 83, and *Health Service Executive v. A.M.* [2019] IESC 3. The point was again confirmed by the Supreme Court in its decision of 17th October, 2019 (*A.C. v. Cork University Hospital & Ors* [2019] IESC 73) ...”

Further, this challenge to the Wardship jurisdiction is the subject of Plenary proceedings issued by the applicant on 10 July 2017 (Record No. 2017/6224P). Though these proceedings were stayed by the then President of the High Court, Kelly P., the applicant does not appear to have made any effort to prosecute them.

12. The applicant maintains that the original Orders made in respect of A.C. are flawed and, thus, the Order of 27 January 2021 and, presumably, the Order of 12 May 2021 are invalid. Again, a submission of this nature was made in earlier proceedings and I refer to the following passage of O'Malley J. in the judgment of the Supreme Court *in A.C. v. Cork University Hospital & Ors* [2019] IESC 73: -

“As far as the orders made in 2018 are concerned, I have concluded that the wardship proceedings were and are still in being, having commenced with the

judicial act of sending out the medical visitor. This is so despite any flaws attached to the order of August 2016. In the circumstances, the Court had jurisdiction to take urgent protective measures in the interests of Mrs. C. in the circumstances as they presented themselves after the Court of Appeal judgment. Those measures were fully justified by evidence that was never challenged on affidavit. Those parts of the orders affecting the direct interests of Mr. C. were upheld on appeal. Therefore, while I would suggest that the High Court should revisit the order made in August 2016, the claim of unlawful deprivation of liberty is not made out."

13. O'Malley J. referred to measures being taken as being "*fully justified by evidence that was never challenged*". Though the applicant continues to strenuously challenge the medical evidence, there was clear evidence before Heslin J. in January, 2021 as to the medical condition of the applicant's mother. In giving his ruling, Heslin J. considered this evidence in detail. The appropriate remedy for the applicant was to appeal this Order and to seek priority for the hearing of this appeal (see *F.X. v. Clinical Director of Central Mental Hospital and Anor.* per Denham C.J. cited above).

14. The hearing before Heslin J. in January, 2021 was a "remote hearing". Heslin J. refused an adjournment application by the applicant for a physical hearing. The Trial Judge was fully within jurisdiction in doing so and was entitled pursuant to the provisions of s. 11 of the Civil and Criminal Law (Miscellaneous Provisions) Act 2020 to direct a "remote hearing". However, the matter was listed for review on 24 March 2021 as Heslin J. had stated in his ruling: -

"—goes so far as one can to try and facilitate [Mr. C.]'s hope of a physical hearing and we'll just simply have to take stock on the 24th ..."

As it turned out, a physical hearing was fixed for 12 May 2021 but, despite Mr. C. being informed of such, he failed to attend. Mr. C. also maintained that, as the hearing proposed for 24 March 2021 did not take place, there was a "gap" in the Order on foot of which his mother is detained in hospital. This is clearly incorrect as the Order made on 27 January 2021 was made "*pending further Order of the Court*". Such further order was made on 12 May 2021.

15. In the foregoing paragraphs I have considered the various submissions made by the applicant. In my view, each of them falls well short of establishing that there was some "*fundamental denial of justice, or a fundamental flaw*" in the making of the Orders on foot of which the applicant's mother is detained as an inpatient at St. Finbarr's Hospital, Douglas Road, Cork.

Conclusion

16. By reason of the foregoing, I dismiss this application as not only is it an abuse of process but also the applicant has failed to establish any grounds whereby I could accede to his application pursuant to Article 40.4.2 of the Constitution seeking the release of his mother from the said hospital.