

**THE HIGH COURT**

**WARDS OF COURT**

[WOC 10718]

**IN RE A WARD: GENERAL SOLICITOR (L.M)**

**RESPONDENT**

**Ex tempore ruling by Mr Justice Heslin delivered on 28<sup>th</sup> February 2024**

**Introduction**

1. I propose to give a ruling, now, in relation to an application which concerns [L.M] leaving wardship and I am very grateful to Ms. Butler, solicitor, who moves that application on behalf of the General Solicitor for Minors and Wards of Court. During this ruling, I will refer to [Ms. M] as the “respondent”.

**Section 55 of the ADMCA, 2015**

2. This is an application brought under s. 55 of the Assistant Decision-Making Capacity Act 2015 (“ADMCA 2105” or “2015 Act”) and the respondent is the “relevant person” under that Act.

**Section 139**

3. The evidence allows for a finding that every reasonable effort was made by the applicant to encourage and facilitate the participation of the respondent in today’s application. Notwithstanding this, she has not attended, but I am very satisfied that *no injustice* can conceivably arise by this Court proceeding to deal with the application having regard to s. 139 of the 2015 Act, given the efforts made to encourage and facilitate participation by the respondent.

**Declarations and orders**

4. For the record, although the respondent is plainly not here to hear it, the court’s role today, having considered the evidence, is to make a declaration or declarations and orders. The range of alternatives, in terms of declarations, are that someone (i) does not lack capacity; or (ii) lacks capacity unless the assistance of a suitable co-decision-maker is made available to them; or (iii) lacks capacity even in that scenario (in which case the appointment of a decision-making representative or “DMR” is appropriate).

**Facts in this case**

5. In relation to the background to today’s application, the respondent is a young woman, born in 2002, who was admitted to wardship in May 2022. The General Solicitor is the committee of her

person and estate. It appears from the evidence that the respondent has been accessing homeless accommodation following the breakdown of a previous placement, which is reported to have occurred as a result of actions by the respondent and her partner.

### **Application by the Committee**

**6.** The committee has brought the present application by way of motion, which issued on 23 October 2023, grounded on an affidavit sworn by Ms. Christina Duffy, solicitor, of the General Solicitor's Office. Ms. Duffy sets out the relevant backdrop, including the respondent's admission to wardship; her current situation; and it is reported, *inter alia*, that the respondent is pregnant.

### **Medical evidence**

**7.** Of crucial significance today, is the medical evidence in the form of a report which is exhibited by Ms. Duffy. That report was prepared by Dr. O'D, a consultant psychiatrist, who carried out an assessment of the respondent on 21 September last. Dr. O'D's report is extremely detailed and runs to some 16 pages. It is clear that Dr. O'D is also someone who has had previous contact with the respondent, having reported on the respondent's capacity on a previous occasion. This latest report makes explicit that the respondent's case is "a most complex and challenging one" and that much time and consideration was given by Dr. O'D in terms of formulating her opinion.

### **Personal Welfare decisions**

**8.** On the crucial aspect of capacity in relation to decision-making in a range of areas, Dr. O'D states, *inter alia*, the following in her 4 October 2023 report (and I quote):-

*"Regarding her capacity in relation to her welfare including skills to manage her activities of daily living, [Ms. M] has capacity at this time in my opinion."*

**9.** Dr. D later states:-

*"[Ms.M] has complex mental health needs given her history of trauma and adversity yet, despite this, she presents as a young woman with significant emotional resilience and grit who is trying to better her life and circumstances despite the limited opportunities she has been afforded."*

**10.** Later still, Dr. O'D states:-

*"She demonstrated an acute awareness of the importance of managing her health needs. Thus, regarding her capacity in relation to her health needs, [Ms. M] has capacity at this time in my opinion. I would hope that in time when she is ready to do so, [Ms. M] will seek psychological help to help her process her trauma but this is a decision only she can make and she has the capacity to do so."*

**11.** The context for this view is that the respondent had an opportunity to engage in psychotherapeutic work, but chose not to.

### **Property and affairs**

**12.** Dr. O'D's report goes on to state the following in relation to finances, and I quote:-

*"[Ms. M], as I understand it, has no financial assets beyond her weekly disability benefit of €203 paid into her bank account to which she currently does not have access. When I assessed [Ms. M] in 2022, she had an allowance of €100 per week. Her allowance has only increased to €120 per week at this point. [Ms. M] previously had full access to her finances and this was revoked when her financial management was called into question in 2021. Since that time, [Ms. M]'s financial management skills have not been tested and her access to her finances has essentially remained unchanged. This has protected [Ms. M]'s financial savings, but also did not allow her to clearly demonstrate that she is equipped with skills to manage her income nor give her freedom to actually make mistakes, 'a human condition' to echo [Dr. G] in her report from which she could learn. This is unfortunate. Notwithstanding this, [Ms. M] is currently demonstrating some skills in the management of her current allowances but she clearly communicated that her allowance is not adequate and a source of pervasive worry and stress for her."* (emphasis added)

**13.** Later, Dr. O'D goes on to state of the respondent, and I quote:-

*"She reported that she likes to have some funds for 'a rainy day'. While I believe that [Ms. M] clearly demonstrates capacity in other domains, it is more challenging to form an opinion regarding her capacity in relation to complex financial management."*

**14.** Dr. O'D goes on to offer the view that the respondent "would benefit from" assistance with more complex decision-making in relation to finances. However, it is clear that this is a view offered because, as Dr. O'D acknowledges, the respondent's capacity in this area has *not* been tested. Dr. O'D's opinion concludes by expressing the view, and I quote: *"In order to test her abilities, positive risk taking will be required."*

**15.** Dr. O'D's report concludes by stating:-

*"[Ms. M] views the care system as punitive rather than supportive, unfortunately. However, this must be balanced with the importance of a support network available to scaffold her when she requires this assistance and efforts must be made to help [Ms. M] understand and appreciate that she has freedom to grow and live independently, manage her own affairs but has support when required. To echo her words, once again, 'The only thing that will help my past is getting the best future'."*

## **Assets**

**16.** From paras. 14 to 17, Ms. Duffy makes averments in relation to the respondent's assets and these are details in a schedule which she exhibits. It seems that the full extent of those assets comprise of a single bank account with a balance which would appear to represent the accumulation of weekly disability benefit, less the allowance referred to in the reporting by Dr. O'D.

## **Social Work report**

**17.** I have also had the benefit of a report, dated 21 November 2023, prepared by Mr. K, social worker. The author met with the respondent on four occasions since the respondent entered Wardship, as the respondent had cancelled other arranged visits. The last visit was on 24 October 2023 in the then placement.

## **Views**

**18.** This report states, *inter alia*, the following under the heading of "*The Respondent's Wishes and Feelings*":-

*"In all of my engagement with the respondent, she has maintained a firm resolve and a strident wish to not live in the care system, have a relationship, and start a family. She has always been vocal in her objection to being made a ward of court believing instead in her own resilience and self-determination to make her own life choices and decisions. This has also been reflected in the majority of assessment reports provided to the court during the wardship process."*

**19.** Later, Mr. K states, and I quote:-

*"The one area of contention between the respondent and professionals is her capacity to budget. In subsequent assessments, the respondent engaged more positively with the assessors and with staff of her previous placement and it was felt some headway was made. Notwithstanding the respondent's determination towards independent living and her self-belief that she does not require professional involvement to achieve this, her life has been fraught with difficulties that she seems unable to fully comprehend the risks. These include relationships with partners who appear controlling and lack of stability [and certain details are given], the fallout of having contact with her father [and, again, certain details are given]."*

**20.** Mr. K also highlights that the respondent is currently accessing homeless services and has lost any sense of security, however ambivalent that she had been with regard to her previous placement, and again, details are given. Mr. K believes that the respondent "*would benefit hugely*" from support regarding financial management of her finances.

## **Benefit from v. lack of capacity to**

**21.** I pause here to observe that there is a material difference between expressing a view that something would be "*of benefit*" (or of huge benefit) to someone and a view that the relevant person *lacks capacity* to make decisions in a particular area where they would benefit from support. The former seems to me to be a view expressed in very good faith through the 'lens' of what might be considered to be a 'best - interests' assessment. However, it is important to understand that the 2015 Act does not assess matters through such a lens.

**22.** The role of this Court is not to prevent what, in objective terms, might well be *less beneficial* decisions from being made. It is not, in a 'paternalistic' manner, to ensure that decisions are only made in the best interests of someone. Rather, the analysis has to hinge on the question of capacity - the 2015 Act being 'underpinned' by the principle of maximising autonomy in terms of decision-making.

**23.** It seems to me, that regardless of the very professional reporting by Mr. K and Dr O'D and the view, doubtless offered in the utmost good faith, that support in relation to decision-making in the financial area would be of *benefit* to the respondent, it does not seem to me that the evidence allows for a finding that the respondent lacks *capacity* in this area.

### **Service**

**24.** Returning to the affidavit evidence, Ms. Duffy swore a second affidavit on 14 February 2024 and it is clear from this affidavit that service issues were properly attended to. Ms. Duffy makes averments, among others, to the effect that she explained the application to the respondent, and the following represents certain quotes from the averments made by Ms. Duffy.

### **The Respondent's wishes**

**25.** At para. 6:- *"I asked the respondent if she had read the report of the medical visitor, Dr. O'D, dated 4 October 2023 as exhibited in the affidavit. She said that she had read the report and she did not want to go into it in detail"*.

**26.** At para. 8, Ms. Duffy avers, *inter alia*, that:-

*"The respondent does not want any support with decision-making. The respondent said that she wants to make her own decisions and to get on with her own life. I explained to her that a decision-making assistant is just there to help and not to make decisions for her. The respondent said that she did not want any more involvement from social workers or from solicitors or anything like that, she wanted to make her own decisions."* (emphasis added)

**27.** At para. 9, Ms. Duffy avers, *inter alia*, that:-

*"The respondent said that she was now well able to ask for help when she needed it. The respondent said she would not necessarily have been able to ask for or accept help when she was younger but now that she is older, she is able to ask for help if she needed it."*

**28.** At para. 10, Ms. Duffy avers, *inter alia*:-

*"I asked the respondent if she had any questions but she said she did not. She said she was excited about being discharged. But 'It doesn't feel real'."*

### **NO EPA**

**29.** At para. 24 of the grounding affidavit, it is averred that no enduring power of attorney or advanced healthcare directive is known to exist.

**Declaration**

**30.** To draw this ruling to a conclusion, in light of the evidence it is appropriate to make the following declaration pursuant to s. 55(1)(a) of the 2015 Act, namely, that the respondent does *not* lack capacity in the areas of personal welfare, and her property and affairs.

**Orders**

**31.** In terms of orders, other than a s. 27 order which I made at the outset, the appropriate order which flows from the evidence is that the respondent be discharged from wardship, pursuant to s. 55(2) of the 2015 Act, and remitted to the management of her own affairs with her property returned to her.

**Congratulations**

**32.** Although she is not here to hear the following, I want to congratulate [Ms. M] very sincerely on exiting wardship. Today's decision reflects a long-held wish of hers.

**33.** It is fair to say that the respondent is someone who has had many challenges in her life and the hope must be that her future will be significantly much brighter than the past.