

THE HIGH COURT

WARDS OF COURT

[2024] IEHC 419

[WOC 3821]

IN THE MATTER OF S.D., A WARD OF COURT AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 55 OF THE ASSISTED DECISION-MAKING (CAPACITY) ACT 2015 (AS AMENDED)

RESPONDENT

Ex tempore ruling of Mr. Justice Mark Heslin delivered on 24th June 2024

1. I want to acknowledge the presence 'online' of [the respondent] today and welcome him. There is no one more important this morning than [the respondent]. We are here for an important purpose, but all for his benefit. I also want to welcome and acknowledge the participation 'online' of [the respondent's cousin] and [the respondent's cousin's wife]. It is clear from the evidence which I will come to that they have played a very important role in supporting [the respondent] and I want to acknowledge and thank them for that.

The court's role

2. Today's application is about [the respondent] leaving wardship. During this ruling I will refer to [the respondent] as "the respondent". This application is brought under the Assisted Decision-Making Capacity Act 2015 ("the 2015 Act") and the respondent is the "relevant person" under that Act. In particular, we are looking at an application brought under s.55, and my job today is to consider all the evidence before the court and then make a declaration, or perhaps more than one declaration, in relation to specific areas of decision-making.

Declaration(s)

3. There are essentially three alternative declarations to be made, depending on the evidence: first, that the respondent does not lack capacity in the relevant area of decision-making; the second alternative is to declare that the respondent lacks capacity unless the assistance of a suitable person as co-decisionmaker can be made available to them; the third alternative, depending on the evidence, is to declare that the respondent lacks capacity even with the assistance of a co-decisionmaker. If that third scenario arises the court should appoint a decision-making representative or "DMR".

4. Having considered the papers I am aware that [the respondent] is a single gentleman aged 70 and, according to the evidence, he has an intellectual disability. He was admitted to wardship in November 2005. The General Solicitor is committee of his estate and his first cousin [redacted] is committee of his person. The respondent lives with his cousin and his wife [redacted] and he has

done so for many years since the sudden passing of his mother, which was very unfortunate indeed. Details of the relevant arrangements are set out in the evidence, in particular, at paragraphs 3-6 of a grounding affidavit, sworn by Ms. Fionnuala Burke. That is a sworn document on which today's application is based and the application issued on the 6th February 2024.

5. Ms. Burke is a representative of the General Solicitor's Office and her affidavit sets out relevant background including the respondent's diagnosis, his admission to wardship, his living situation and needs, the steps taken to bring the present application, the relevant medical evidence and his assets. Among other things it is averred (in other words) it is sworn that the respondent is someone without children and does not have siblings and his parents have sadly passed on. In the manner which Ms. Burke avers, at paras. 7-10 of her affidavit, correspondence was sent to the respondent in relation to today's application and that included a 'reader friendly' leaflet about leaving wardship. Correspondence was also sent to [the respondent's cousin] and [the respondent's cousin's wife] so it is very clear that all relevant parties were aware of the nature of the application and invited to comment and contribute to and on it.

Medical evidence

6. Turning to the medical evidence, I have the benefit today of an assessment carried out by Dr. K who met with the respondent on the 23rd February 2024. In relation to her views, it is appropriate to note that she states, among other things, that the ward has an intellectual disability as a result of congenital hydrocephalus. She explains the nature of this condition and the fact that it has resulted in impaired cognitive functioning, namely, that the respondent requires support and assistance for many aspects of his daily life. It is also made clear that this condition is permanent.

Health

7. Dr. K speaks directly to the question of the respondent's decision-making in various areas and, in the area of 'health' (including care and treatment) Dr. K states: "*the ward has difficulty understanding information relevant to health decisions, and balancing and weighing the information to make a decision, but would have capacity with the assistance of a decision-maker.*"

Welfare

8. Dr. K offers a similar view in relation to decision-making in the area of 'welfare' (including the supports required for activities of daily living). In other words, the respondent has difficulty understanding and using information to make a decision of this type but would have capacity with the assistance of a co-decision-maker.

Property and Financial

9. The third area of decision-making covered by the 2015 Act is that of property and financial decisions. Dr. K has found that the respondent would have difficulty understanding information, retaining it and using it to make decisions of a financial nature and does not have capacity to make such decisions. On the basis of those findings Dr. K makes the following recommendations in

relation to discharge from wardship : *"the ward lacks capacity in the areas of financial issues, even if the assistance of a suitable person as a co-decision-maker were made available to him. He lacks capacity in the areas of health and welfare unless the assistance of a suitable person as a co-decision-maker is made available to him to make decisions"*

Uncontroverted

10. As Ms. Butler has very rightly pointed out in her helpful and comprehensive submission, no issue has been taken by or on behalf of the respondent with the medical evidence I have just referred to. In other words, this is the uncontroverted medical evidence that the court has to base its findings on.

Service

11. I am also entirely satisfied that all service issues have been properly dealt with. This is in circumstances where I had the benefit of an affidavit of service sworn by Ms. O'D solicitor on the 29th May 2024 and this makes clear that service was effected properly on the respondent on the 24th May 2024. Ms. O'D also makes averments to the effect that she explained the contents of the application papers to the respondent in plain and simple language in the presence of the [the respondent's cousin and his wife]. It is also clear that Ms. O'D had a very full discussion with all three in relation to the choice and role of a co-decisionmaker and DMR, respectively.

Co-decision-maker / DMR

12. Ms. O'D makes averments (in other words, she swears to be correct a number of statements) including the following. At para. 15 of her 29th May affidavit she swears: *"before I finished my conversation with [the respondent] I returned one last time to the question regarding his decision-making representative for finances. I asked was he happy for the court to appoint somebody independent to look after his financial affairs. [The respondent] said that he was. I asked [the respondent] if he was happy for [the respondent's cousin] to be his co-decision-maker and to look after his personal welfare decisions and [the respondent] advised that he was"*. Later, at para. 16, Ms. O'D, who had the benefit of observing all three and meeting them in the [respondent's cousin's] home, stated *"I believe he trusts [the respondent's cousin] and [the respondent's cousin's wife] wholeheartedly and it is apparent that he loves and is very comfortable and happy living in their home."* I want to take the opportunity to thank them for their open heartedness and kindness which has been of obvious benefit to the respondent.

Things to stay 'as is'

13. In a further affidavit, sworn on the 12th June, concerning a visit which Ms. O'D made on the 7th June, she makes among other things, the following sworn statement at para. 7: *"[the respondent] advised that he wanted things to stay 'as is' and I reassured him that this would be the case but he would now have a new person, looking after his money and there would be a legal agreement with [the respondent's cousin] and [the respondent's cousin's wife] to assist him with the rest of his decisions."* I want to reassure [the respondent] that this is absolutely so. No

decision that this court makes today is going to alter things 'day-to-day'. Things will continue 'as is' but with the formality of supports around him provided for under the new Act and it can only be to his benefit for that to be so.

Independent social worker

14. As averred by Ms. Burke the applicant, the General Solicitor, also engaged an independent social worker, Mr. B. Mr. B met with the respondent on the 28th November 2023 and I had the benefit of Mr. B's 21st November report. In summary, the contents of this report illustrate that the respondent is living a happy and full life supported by the [respondent's cousin and his wife]. Among other things, reference is made to [the respondent]'s attendance at the local church and him helping out on a regular basis. He is described as a great walker, someone who is out and about every day. Reference is made to many things that he is able to do for himself as well as the issues that he requires help with. He is reported to be on no medication and to eat and sleep well. He showed Mr. B his bedroom which is bright and comfortable. He had all his clothes neatly organised in his wardrobe and, as a parent of teenagers, I wish that was true for everybody. The respondent is described as a very happy and content individual, someone who is very much a part of the [redacted] family and seems cherished and respected. He appears to have, says Mr. B, a very good quality of life and is very much embedded in his community. Mr. B's report ends by saying, in summary, "*it seems an ideal arrangement for a man who has lived in the community all of his life up to now.*" That is not going to change and I want to thank [the respondent] for his contribution to his community, evident in this report, including the help he gives to others.

Assets

15. From paras. 20-22 of the grounding affidavit, Ms. Burke makes averments in relation to the respondent's assets, which are detailed in the schedule exhibited. In summary, these comprise of certain monies in court, and in the committee account.

Independent DMR for finances

16. In light of the findings of Dr. K and the wish of the respondent to have an independent person as DMR for his finances, the nomination of Ms. P to act in that role was approved by the President. Ms. P is an experienced solicitor with a particular expertise in acting for vulnerable persons and, among other things, she is someone who, since 2017, has been a member of The Law Society's Human Rights Committee.

Declarations

17. Having summarised the evidence I now turn to this court's decisions. The first is to make declarations which are appropriate in light of the evidence. It is appropriate to declare, pursuant to s.55(1)(b)(i) of the 2015 Act, that the respondent lacks capacity in the areas of health and personal welfare decision-making *unless* the assistance of a suitable person is made available to him as act as co-decisionmaker.

18. It is also appropriate that the court declare, pursuant to s.55(1)(b)(ii) of the 2015 Act, that the respondent lacks capacity in relation to decisions concerning property and financial affairs, *even* if the assistance of a suitable person as co-decisionmaker were made available to him.

Orders

19. Turning then to the appropriate orders I want to repeat my thanks to Ms. Butler for the careful drafting which has obviously gone into a suggested draft. I took the opportunity over the weekend to consider its terms in conjunction with the provisions in the 2015 Act and I am very satisfied that the draft order charts the appropriate course, with respect to the provisions of the 2015 Act. For the sake of clarity, it is appropriate to summarise the orders this court is making today. The first is an order pursuant to s.27 of the Civil and Miscellaneous Provisions Act 2008 in relation to reporting restrictions.

20. It is appropriate to order that Ms. P be appointed to act as decision-making representative for the respondent pursuant to s.55(5)(b) of the 2015 Act, in the area of property and financial decisions, only.

21. If a DMR was being appointed today in *all* areas of decision-making covered by the 2015 Act, then the respondent would be discharged from wardship upon that appointment. However, as we see from the evidence, this is not a situation where it would be appropriate to appoint a DMR in more than one area of decision-making. As Ms. Butler has correctly pointed out in her submission, the respondent is someone who, on the evidence requires the assistance of a co-decision-maker for health and personal welfare decision-making. However a discharge from wardship pursuant to s.55B(ii) of the Act is contingent on the registration of a co-decision-making agreement.

22. To address the situation we find ourselves in here, and to facilitate the respondent's discharge from wardship today, I am satisfied reliance can be placed on s.38(8)(a) which, in effect, makes provision for a DMR order to cease having effect upon the date of registration of a co-decision-making agreement with the Decision Support Service or 'DSS'.

23. Against that backdrop I am today making an order that [the respondent's cousin] be appointed as decision-making representative for the respondent in relation to the areas of health and personal welfare decision-making, until such time as a co-decision-making agreement is registered with the DSS in relation to those areas pursuant to s.38(8)(a)(b).

24. I am also ordering that [the respondent's cousin], in his role as decision-making representative, which of course is a temporary one and will cease on the registration of the co-decision-making agreement, is to act jointly with [the respondent] in relation to such decisions, in the manner provided for in s.41 (3) of the 2015 Act.

25. For the avoidance of doubt this order appointing [the respondent's cousin] as DMR will cease to have effect on the date of registration of a co-decision-making agreement in line with Part 4 of

the 2015 Act (that registration being of course with the DSS and being in relation to health and personal welfare decisions pursuant to s.38(8A)(b)).

26. I think it is appropriate that there be a time specified and that the matter not be left 'open-ended', so I am going to order that this registration must be within three months. There will be liberty to apply in respect of that, lest there be a practical issue, but it does seem to me that, rather than it be 'open ended', I should specify a time limit, in the order.

27. On the basis of the orders I have just made, the respondent is today hereby discharged from wardship pursuant to s.55(5)(b).

28. It is also appropriate to order that the decision-making representative for property and financial affairs, Ms. P, is authorised to receive the assets held by the Accountant of the Courts of Justice, and in the committee account maintained by the General Solicitor, on production of details of a bank account under her control, custody and management in the name of the respondent and herself.

29. It is appropriate also to order that the DMR account to the Director of the DSS in accordance with s. 46(6) of the Act.

30. I am also ordering that the Accountant of the Courts of Justice carry out the directions contained in the payment schedule contained in the application.

31. It is appropriate to order in the present circumstances that Ms. P review the personal allowance for the respondent and the allowances in place for him as regards care and maintenance within three months of the date of the making of these orders.

32. It is appropriate also to order that, pursuant to s.42(1), the DMRs are not entitled to be reimbursed out of the assets of the respondent in respect of their expenses.

33. It is also appropriate to order that, pursuant to s.42(2), that Ms. P, as DMR regarding property and financial decisions, is not entitled to payment of her remuneration from the assets of the respondent (and that is appropriate in circumstances where she is a professional DMR).

34. Given the permanent nature of the respondent's condition, and having regard to the evidence of Dr. K and, taking into account the respondent's age, it is appropriate to order that the respondent's capacity be reviewed no later than three years from the date of this order.

35. It is also appropriate to order that Ms. P as financial and property DMR, be authorised to receive a copy of the schedule of assets.

36. To [the respondent], I want to make clear that there is nothing he needs to be anxious about or concerned about as a result of today. Things are going to continue 'day-to-day' as they have been. His current living arrangements are clearly of enormous benefit to him and I want to renew my thanks to the [respondent's cousin and his wife] for their part in that. I hope that [the respondent] continues to have the happy and full life with supports from the [redacted] family who clearly care for him very much.

37. Finally, I want to congratulate him on leaving wardship, to thank him again for the help he gives to others, and to wish him the very best for the future.