

# THE HIGH COURT

## WARDS OF COURT

[2024] IEHC 452

[WOC 10026]

### IN THE MATTER OF B.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 28<sup>th</sup> June 2024

1. During this ruling I will refer to [the respondent] as “the respondent” and it is an application about the respondent leaving wardship. It is brought under s.55 of the Assisted Decision-Making Capacity Act 2015 (“the 2015 Act”). The respondent is the relevant person under that Act.

#### **The court’s role**

2. The job which this Court has today, is to consider all of the evidence which was put before it, and then to make a declaration, or declarations, in relation to certain areas of decision making. There are three alternatives: the first is (i) that the respondent does not lack capacity; the second is (ii) that the respondent lacks capacity unless the assistance of a suitable person as co-decision-maker can be made available to them; the third option is (iii) that the court should declare the respondent lacks capacity even with the assistance of a co-decision-maker. If that third situation arises it is appropriate to appoint a decision-making representative or ‘DMR’. That can also happen where there is no suitable person available to act as co-decision-maker.

3. Turning to certain facts in this application, the respondent is a gentleman born in 1985. According to the evidence, he has a diagnosis of moderate intellectual disability, as well as diabetes. He was admitted to wardship in 2020 and the General Solicitor is his committee.

4. The respondent resides in a supported residence under the care of [the service provider] and [the service provider] provides 24-hour care for people with special needs.

#### **The application**

5. This application was brought by way of a motion, which issued on 10 January 2024. I have in front of me the affidavit (which is a sworn document supporting) the application. That was provided for Ms Linda Harney a solicitor in the General Solicitor’s Office and this affidavit sets out information (including concerning the respondent’s diagnosis; his

admission to wardship; his current living situation; those who care for him; his needs; the steps taken to bring today's application; relevant medical evidence; and the respondent's assets).

**6.** It is clear from the evidence that the respondent is a single gentleman who first availed of [the service provider's] services as far back as 1988 and who has been in his residential placement since 2007.

### **Notice**

**7.** In the manner sworn (that is "averred") by Ms Harney at paras. 6,7,10 and 11 of her affidavit, correspondence concerning today's application was sent to the respondent himself, which included a 'reader-friendly' leaflet about leaving wardship. Correspondence was also sent to the residential and respite manager of [the service provider] Ms C.

### **Medical evidence**

**8.** Turning to the medical evidence, Dr H is a Consultant Psychiatrist. She carried out an assessment of the respondent on 16 January 2024. Regarding the respondent's capacity in relation to specific areas of decision-making, and as regards the great care he currently receives, Dr H states, among other things, the following in her 16 January report:-

*"Two staff were in attendance at the time of my assessment. [The respondent] seemed very comfortable with the staff, and they seemed very caring and interested in him. He looked well both physically and mentally. He spoke with great enthusiasm of his trip in 2023 to London with two staff. They visited Lego Land and the London Eye. The next trip is being planned and this will be to Portugal. He recalled my name at the end of the assessment, and I read, with interest, in my clinical notes, that he never forgot a name."*

**9.** Dr H goes on to say that the respondent could not tell her how long he had lived in the house but he said he liked his friends, he liked the day centre and she described the respondent as "*overall pleasantly vague and relaxed*", and someone "*who could develop a good rapport and was a very likeable person*".

### **Health**

**10.** In relation to decisions concerning health, including care and treatment, Dr H's opinion is that first the respondent was receiving excellent healthcare. She went on to say:- "*there was careful liaison between staff and medical practitioners. [The respondent] himself could not tell me anything about his health. He could not name his diagnoses and he could not name his prescription medication. He had no insight or judgment in relation to his healthcare needs.*"

## **Welfare**

**11.** As regards welfare, including supports required for activities of daily living, Dr H stated:-

*"[The respondent] required a lot of assistance for his activities of daily living. There are staff present in the residence all the time. There are another two residents in the house and a staff member sleeps over in the house in case of need every night. [The respondent] has no idea how to shop, pay a bill, drive a car, go by bus or plan a journey. He said he enjoyed cooking and he explained to me that he cooked every day at the day centre. He could not tell me what he cooked or give any details whatsoever on this."*

## **Property and finances**

**12.** In relation to decisions concerning property and financial affairs, Dr H stated that:-

*"[The respondent] agreed with me that he was in receipt of Disability Allowance. He could not tell me the relevant amount of money he received nor how he collected this. He could not say whether he had any other property or assets."*

## **Discharge recommendations**

**13.** In light of Dr H's assessment, and the views set out in her detailed report, she made the following recommendations in relation to discharge from wardship:-

*"[The respondent] lacks capacity unless the assistance of a suitable person as a co-decision-maker were made available to him to make one or more decisions. I do not think [the respondent] requires a decision-making representative. This would be disadvantageous to him in that the staff in [the service provider]'s service were already assisting him to make decisions and would be best placed to assist him to make decisions in the future."*

**14.** I pause to say that the 2015 Act contains, at s.18, a prohibition on an employee of a service provider being appointed in any formal capacity to assist and I will presently come to the significance of that in relation to choice expressed by the respondent, but it is of obvious significance given what Dr H has said.

**15.** The views expressed by Dr H comprise uncontroverted medical evidence. This is in circumstances where there is no differing view before the court, nor was there any suggestion that any issue was taken with those views.

## **Independent social worker**

**16.** The applicant, the General Solicitor, also instructed an independent social worker Ms M, and Ms M visited the respondent at his home on 5 September and made a further visit to his day centre on 4 October and, in addition to speaking with staff, made a third unannounced visit to the respondent's home on 12 October 2023.

**17.** Ms M reports, among other things, the following: -

*"[The respondent] enjoys very good independent living skills, and he is motivated and capable of performing household duties such as cleaning, putting his clothes away, emptying the dishwasher, putting the shopping away, prepping food, assisting with cooking and baking. [The respondent] is capable of making breakfast and snacks for himself and is encouraged to do so."*

**18.** I want to congratulate [the respondent] for all his hard work in the home and say that, I wish everyone was as helpful around the house as he clearly is.

**19.** Ms M goes on to say that staff have engaged in easy-read stories with [the respondent] around the Ward of Court process and the Assisted Decision-Making Act 2015 and have carried this out on a number of occasions with [the respondent]. Ms M met with [the respondent] on two occasions and is of the view that [the respondent] has difficulty understanding the concept of both of these processes. The independent social worker's analysis includes the following: -

*"It is this writer's view that [the respondent] is receiving a very high level of care within [the service provider's] service where all of his physical, social and emotional needs are being met. [The respondent] is enjoying and benefitting from a very fulfilled life where he is being provided with the opportunities to engage in the same social activities that other young men of his age engage in and enjoy. [The respondent] appears to be very happy at the present time and this is also as a result of the care and support provided by his leisure buddy [redacted], through periods of respite and with Mr & Mrs [redacted] and the longstanding and supportive relationship he continues to enjoy with Mr & Mrs [redacted]."*

### **Service**

**20.** The court also has the benefit of an affidavit sworn by Ms G solicitor, on 13 June 2024, and the affidavit makes clear that service was effected, personally, on 29 May. Ms G 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 Ms C as well as the person in charge of the placement, Ms L.

### **S. 18(1)(f)**

**21.** It is clear that when asked to express a view on a co-decisionmaker to assist him, the respondent identified an employee of [the service provider] and this, of course, speaks to the great care he is receiving and the trusting relationship he has with those providing such dedicated care to him. As I have said, such an appointment is prohibited under s.18(1)(f) of the 2015 Act.

**22.** The respondent also identified someone who gave the matter great consideration but felt it would not be appropriate to take on that role.

**23.** Ms G made a second visit to the respondent on 12 June, and during that meeting, it was explained that his choices of co-decision-maker were not in a position to carry out that role.

#### **Views**

**24.** As to the respondent's views, he made clear that the issues of importance to him are (i) that he wants his passport for the holiday in Portugal, which is planned for August, and (ii) he wanted ready access to money, with reference made in particular to purchasing a game for his Xbox.

#### **Assets**

**25.** From paras. 18-22 Ms Harney makes averments in relation to the respondent's assets. These are also detailed in a schedule before the court.

**26.** In summary, they comprise of certain monies in court; monies in the committee account maintained by the General Solicitor; certain monies in a bank account and in a credit account; as well as weekly disability allowance which is paid into the respondent's bank account.

**27.** At para. 24 Ms Harney avers that there is no Enduring Power of Attorney or Advanced Healthcare directive known to exist.

#### **No suitable co-decision-maker**

**28.** It is clear, as I say from the averments made by Ms G, that there is no suitable person to act as co-decision-maker. This is in circumstances where staff employed by the service caring for the respondent, are unable to carry out that role.

#### **Nomination approved**

**29.** In these circumstances, the nomination of Ms A was approved by the President of this Court. Ms A is an experienced solicitor and a qualified mediator with a particular expertise in acting for vulnerable persons and I want to acknowledge her participation today online.

**30.** To draw this ruling to a conclusion, this is a situation where the evidence would support the making of a declaration pursuant to **s.55(1)(b)(i)** of the 2015 Act that the respondent lacks capacity in the areas of health, personal welfare, and property and financial affairs, unless the assistance of a suitable co-decision-maker were made available to him. However, no suitable person is available to act as co-decision-maker. This is a situation covered by the 2015 Act. Therefore, having regard to **s.55(4)(a)**, where there is no persons suitable or available or willing to act as co-decisionmaker and in light of **s.55(4)(ii)**, the respondent is discharged from wardship on the appointment of a decision-making representative in *lieu*.

**31.** This is subject to the obligations set out in **s.41(3)** of the 2015 Act. **S.41(3)** provides that the DMR, appointed in such circumstances, shall ensure insofar as possible that they jointly make decisions with the relevant person.

**32.** Turning to appropriate orders, in summary, I am making an order under **s.27 of the Civil Law Miscellaneous Provisions Act 2008** preventing publication or broadcast, which would or might identify the respondent as a person suffering from the conditions in question.

**33.** The respondent is now discharged from wardship pursuant to **s.55(1)(b)(i)** and is remitted to the management of his affairs with the appointment of a DMR pursuant to **s.55(4)(a)** and **s.55(4)(ii)**.

**34.** Ms A is appointed to act as DMR pursuant to **s.55(4)(ii)** of the Act, in the areas covered by the Act, i.e. regarding personal welfare and property and affairs decisions.

**35.** This appointment is subject always to the obligations in **s.41(3)**.

**36.** The DMR is authorised to take custody, control and management of the assets held on behalf of the respondent by the Accountant of the Courts of Justice; and those assets held in the committee account of the General Solicitor; and those assets held in the bank account and credit union account referred to in the application.

**37.** The DMR is to account to the Director of the Decision Support Service ("the DSS") in accordance with the provisions of **s.46(6)** of the Act.

**38.** The applicant is to arrange for the respondent to receive his Department of Social Protection payment directly. This arrangement should be reviewed by the DMR within 12 months of today's date.

**39.** In relation to remuneration and expenses, it is appropriate to order that pursuant to **s.42(1) and 42(2)** of the 2015 Act, the DMR is not entitled to be reimbursed out of the assets of the respondent in relation to expenses or remuneration incurred in performing the functions of DMR. By making that order, it ensures that another alternative, provided in the section, can apply to fees and expenses.

**40.** The capacity of the respondent, having regard to the evidence provided by Dr H, should be reviewed by the Circuit Court no later than three years from the date of this order in light of **s.55(a)(i)**.

**41.** It is appropriate to order that the applicant be authorised to provide a copy of the pleadings in the booklet before the court today to the DMR.

**42.** I note that no application for costs is made today.

**43.** Having made those declarations and orders, I want to return to [the respondent] himself and to thank him for his tolerance today. He has been very patient indeed and I really am grateful for that. It is clear from the evidence that [the respondent] is a very sociable young man who lives a very full and happy life supported by a dedicated care team and I also see from the evidence that he is someone with many strengths and his hard work in the home demonstrates this. I want to thank him for that.

**44.** I want to reassure him, as well, that nothing this Court has decided today is going to change his day-to-day experience. I also want to take the opportunity to thank all of those involved in [the respondent]'s life including the care staff in [the service provider], his care buddy [redacted] and his friend [redacted]. Nothing I have decided today will change their care for him.

**45.** I see from the papers that [the respondent] enjoys watching football matches and what has happened today is simply that someone else has joined his 'team' and, like everyone else on his existing team, Ms A will now be on his side and will help with decision-making going forward. She will help ensure, for example, that he has money available to spend, be that on an Xbox game or otherwise, and she will ensure that his passport will be available to him and hopefully he will very much enjoy his holiday in Portugal.

**46.** The shared aim of everyone will continue to be for [the respondent] to live a fulfilled and happy life, and I want to congratulate him on exiting wardship.