

THE HIGH COURT

WARDS OF COURT

[2024] IEHC 495

[WOC 5978]

**IN THE MATTER OF AN APPLICATION TO DISCHARGE A DECISION-
MAKING REPRESENTATIVE PURSUANT TO SECTION 38(7) OF THE
ASSISTED DECISION-MAKING (CAPACITY) ACT 2015**

Ex tempore ruling of Mr. Justice Mark Heslin delivered on the 9th day of July 2024

1. I am grateful to Mr McLean, solicitor, for the Decision Support Service (or "DSS"), who moves today's application, which is to discharge Ms K as decision-making representative (or "DMR") for [the respondent] ("the relevant person"); and to make an order appointing a replacement DMR, in accordance with section 38 (7) of the Assisted Decision-Making Act 2015 (or "the 2015 Act").
2. Today's application is grounded on an affidavit sworn on 4 July 2024 by Ms Aine Flynn, who is the Director of the DSS.
3. The following is a summary of the relevant facts and statutory provisions.
4. On 21 March 2024, the General Solicitor made an application to discharge the relevant person from Wardship.
5. In light of the evidence, this court made a declaration pursuant to s. 55(1)(b)(ii) concerning the capacity of the relevant person; appointed Ms K as his DMR in all areas of decision-making covered by the 2015 Act (i.e. personal welfare including healthcare; and property and financial affairs) and the relevant person was discharged from Wardship pursuant to s.55(5)(b).
6. In this manner, the relevant person was remitted to the management of his own affairs with the assistance of his DMR.
7. The present application arises because it has proved impossible for this Court's order of the 21st March to be given effect. This is due to the personal circumstances, including illness, of the DMR. The following is the sequence of relevant events.
8. The DSS supervision team held an introductory call with the DMR on 16 April of this year and advised her that an initial report was due by 6 June.
9. A further, and more detailed, call was scheduled for 23 May, but, despite making 3 attempts to call the DMR, the DSS supervision team was unable to speak with her.

- 10.** On 4 June, the DSS was contacted by the General Solicitor, advising that the relevant person's HSE case coordinator had contacted them regarding a number of matters which needed to be attended to by the DMR.
- 11.** These included the relevant person's social welfare payments.
- 12.** On 6 June, a member of the DSS supervision team wrote to the DMR about these matters, but no response was received.
- 13.** A call took place on 12 June, when the DMR advised that she was on sick leave until 24 June, and indicated that she would make arrangements to meet with the relevant person in the following few weeks.
- 14.** On 20 June, the DMR wrote to say that, due to extended sick leave and a change in personal circumstances, she was unable to contact the relevant person.
- 15.** The DMR asked if there was a possibility of an alternative DMR being appointed. She was advised by the DSS that she should make the relevant application to court.
- 16.** On 26 June, the 'Supervision' team and 'Panels' team of the DSS sought confirmation from the DMR, by 27 June, that the relevant application would be made to court.
- 17.** On 1 July, the DSS 'Head of Panels' spoke by phone to the DMR, who stated she was physically unable to make a court application.
- 18.** On 3 July, the DMR wrote to the DSS stating the following:

"It is with regret that I inform you that I have been unable to take up my role as DMR for the above case. As a result, I have not made any of the decisions for which I have been appointed. I agree that an alternative DMR should be appointed in my place. Unfortunately, due to personal, tragic family circumstances, I am unable to bring the application myself regarding my discharge as DMR."
- 19.** It is in these circumstances that the present application is brought by the Director of the DSS.
- 20.** In my view, it is very appropriate that the Director has done so, particularly in light of the following averments at paragraph 17 and 18 of the director's grounding affidavit:

"17. I say that this is a matter which is of significant urgency in that the financial arrangements in providing care to [the respondent] have not been progressed. We have received communication from the HSE Case Co-ordinator that [the respondent] is extremely vulnerable and that there are creditors, including [a care provider], upon whom he is very reliant, who have withdrawn, or are withdrawing their services due to lack of payment.

18. I say that the current arrangements are unsustainable and the replacement of the DMR is now extremely urgent."
- 21.** As averred by Mr McClean, in his affidavit sworn on 8 July, notice of today's application has been served on the DMR, who contacted Mr McClean by email on 8 July to confirm receipt.

- 22.** Service of the application was also effected on the office of the General Solicitor for Minors and Wards of Court, and on the relevant person, via Ms P, the relevant person's HSE case co-ordinator, for onward transmission to him.
- 23.** Having regard to section 36 of the 2015 act, the Director is a person entitled to bring an application to vary a decision-making representation order.
- 24.** Section 38(14) confers jurisdiction on this court to vary a decision-making representation order
- 25.** Two nominations have been made from the DSS panel in relation to a potential replacement and Mr F has been approved as a proposed replacement DMR.
- 26.** Mr F brings a range of skills and experience to the role in circumstances where he is a registered Psychiatric Nurse, an Accredited Mediator, and a member of the Irish Auctioneers and Valuers association, who has worked within the HSE, voluntary bodies, and the PTRB.
- 27.** Whilst this court's powers under s 38(14) are discretionary, the facts make clear that the order made by this court on 21 March 2024 is simply inoperable until the DMR is replaced. Furthermore, not only is there urgency, the DMR is not in a position to move an application.
- 28.** Therefore, in these particular circumstances, I am acceding to the application, grateful to the Director of the DSS for bringing it. To conclude, I am making an order, varying the order made on 21 March, by replacing Ms K with Mr F as DMR for the relevant person.