[2019] IEHC 933

THE HIGH COURT

[Record No. 2019/885/SS]

BETWEEN

A.C.

APPLICANT

AND

SIMON HARRIS MINISTER FOR HEALTH, PAUL REID CHIEF EXECUTIVE OFFICER OF HEALTH SERVICE EXECUTIVE AND JAMES FINN REGISTRAR OF WARDS

RESPONDENT

AND

GENERAL SOLICITOR FOR MINORS AND WARDS OF COURT

NOTICE PARTY

JUDGMENT of Ms. Justice Ní Raifeartaigh delivered on the 25th October, 2019

Introduction

1. This is an application brought pursuant to Article 40.4.2 of the Constitution for the release from hospital of Mrs. C., a 96-year old woman currently living in St. Finbarr's Hospital, Douglas Road in Cork. She 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 present application pursuant to Article 40.4.2 of the Constitution was heard by me over two dates, 31st July, 2019 and 2nd August, 2019. I reserved judgment to 11th September, 2019 because of the multiplicity of issues raised, the number of authorities and other documents handed to the Court, and the complexity of the history of the case. Although it was evident that there was some considerable overlap between the submissions made to me and the submissions Mr. P.C. had made to the Supreme Court in May 2019, I thought that I should nonetheless proceed to deliver judgment as soon as possible because of the nature of the application before me, namely an application pursuant to Article 40.4.2 of the Constitution. However, I received further unsolicited written submissions from Mr. P.C. the day before my judgment was due, and I adjourned for one week to enable the other parties to respond to his submissions if they wished to do so, which they did. On the day before the second date for judgment (fixed for 18th September, 2019), I again received further written submissions from Mr. P.C. At this stage, I decided to adjourn the delivery of judgment in the matter until after the Supreme

Court judgment had been handed down, having been told that this had been listed for 16th October, 2019. I did so because Mr. P.C. was submitting to me that the Supreme Court had already decided certain matters in his favour and was also making allegations against various lawyers acting in the proceedings before me as to what had taken place in the Supreme Court. Accordingly, it seemed to me preferable to await the Supreme Court decision.

Preliminary matters

3. At the outset of the hearing, I made an order pursuant to s. 27 of the Civil Law Miscellaneous Provisions Act, 2008 prohibiting the publication of any matter likely to identify A.C. In my view, it would be entirely inappropriate that the identity of a vulnerable person, a woman of 96 years of age with multiple health issues and who is a ward of court, be disclosed to the media in circumstances where the hearing necessarily involved reference to highly sensitive and personal details relating to her medical conditions and her overall situation. The making of this order was opposed by Mr. P.C., a position which he stated he adopted because he wanted the media to be aware of the treatment of his mother by the State authorities, which (he said) amounted to serious mistreatment and torture. The prohibition I imposed on the publication of any details relating to the case was limited to material likely to identify A.C. herself and did not extend beyond that limited scope. Thus, the media are free to report such aspects of the case as they see fit, provided they do not identify the ward or publish material likely to identify her. I note that a similar order was made by Faherty J. upon the occasion of Mr. P.C.'s Article 40.4.2 application before her in July/August 2018.

4. At the outset of the hearing, upon application made to me grounded on affidavit, I also made an order joining the Committee of the Ward (Ms. Patricia Hickey) as a notice party to these proceedings. This order was also opposed by Mr. P.C. who does not accept that the Committee is acting in the best interests of the ward. I note that a similar order was made by Faherty J. in respect of the Article 40.4.2 application before her almost exactly one year ago, and that a similar order was also made by the Court of Appeal in the course of the appeals taken by Mr. P.C. against the 2016 refusal of his Article 40.4.2 applications. In the course of his ruling at that time, Ryan P. said that the motion to join the Committee was "irresistible" and that "the case could not be properly disposed or debated without having the General Solicitor for Wards of Court".

5. As to the locus standi of Mr. P.C. himself to bring this application, it is the case that the present application under Article 40.4.2 was not supported by the Committee of the Ward, but I was mindful of the comments of the Court of Appeal in its judgment of 2nd July, 2018 (*A.C. & Anor v. Cork University Hospital & Anor*) in relation to the same ward, which were as follows (per Hogan J.):

> "34. In arriving at this conclusion I do not overlook the fact that Ms. A.C. was subsequently taken into wardship and the Court was informed during the course of the appeal that the committee of the ward has no interest in maintaining this appeal. It must be recalled, however, that the right to apply on behalf of another is deemed by Article 40.4.2 to be constitutionally inviolate. As the Supreme Court has

made clear, the rights guaranteed by this constitutional provision lie beyond the capacity of the Oireachtas to regulate, still less abridge: see, e.g., by analogy the comments to this effect of Walsh J. in The State (*Aherne) v. Cotter* [1982] I.R.188, 200.

35. It follows, therefore, that if Mr. P.C. has the right to apply on behalf of his mother pursuant to Article 40.4.2 as - in these circumstances, at least, he clearly has - that right cannot be swept away by Victorian wardship legislation, no matter how venerableo r long-established. It follows in turn that Mr. P.C. must be deemed to have the necessary standing to make the present applications on behalf of his mother and this right remains unaffected by the fact that his mother was subsequently taken into wardship after the High Court had ruled against him in these two applications."

6. Mr. P.C. sought to introduce into evidence before me an audio recording of his mother authorising him to make the application, but I did not consider it necessary to hear that recording in light of the above comments, and I proceeded to hear Mr. P.C.'s submissions. Bizarrely, Mr. P.C. continued to complain that I had not listened to these voice recordings despite the fact that I did not shut him out from making his application. Since then, the Supreme Court has made certain observations in relation to *locus standi* in Article 40.4.2 proceedings at paragraphs 311-317 and 385-388 of its judgment in *A.C. v. Cork University Hospital & Ors*, which I do not consider to be in conflict with the approach I adopted (i.e.to allow Mr. P.C. to proceed).

Chronology

7. I do not propose to set out the chronology prior to the Article 40.4.2 application heard by the High Court (Faherty J.) on 3rd August, 2019 as it is fully dealt with in a number of previous judgments of the Superior Courts. For present purposes, it is sufficient to say the following. The present case was not in any way concerned with the question of A.C.'s detention by the hospital on 23rd June, 2016 or the initial wardship order in August 2016. Mr. P.C. brought the present application while judgment was pending from the Supreme Court in respect of: (a) the Court of Appeal decision in respect of events on 23rd June, 2016; and (b) the High Court decision of Faherty J. on an Article 40.4.2 application. The case of A.C. had, meanwhile, continued to appear in the wardship list before the President of the High Court on a number of dates: 9th October, 2018; 11th December, 2018; 21st May, 2019; and 4th June, 2019. On each occasion, having considered the evidence, the President renewed the existing orders and set a further review date. The most recent order of the President was that of 4th June, 2019 which directed that A.C. "shall remain an in-patient at St. Finbarr's Hospital, Douglas Road, Cork pending further Order of the Court". A more detailed account of what transpired before and during each of those hearings is set out below. It may be noted that P.C. did not participate in those hearings other than to protest that the President had jurisdiction to conduct the hearings because he was, in P.C.'s view, *functus officio*. The submissions in the application before me were concerned with the President's wardship jurisdiction. There was some overlap between

what was argued before me and what was argued by Mr. P.C. in the Supreme Court appeal i.e. so much of his case as related to the exercise of the wardship jurisdiction.

8. After the judgment of Faherty J. in August 2018, the first date on which the case of A.C. appeared in the wardship list was 8th October, 2018. It was adjourned to the next day. On 9th October, 2018, the evidence before the President included a report from Ms. Patricia Hickey describing her visit to A.C. at the hospital on 5th September, 2018 and a report of a consultant geriatrician, Ms. Padraigin O'Sullivan, who was of the opinion that A.C. lacked capacity. The President renewed the orders previously made.

9. The matter came before the President of the High Court again on 11th December, 2018, at which point there was a report of consultant geriatrician, Dr. Norma Harnedy, sworn on 13th November, 2018. Both Mr. P.C. and Ms. V.C. had been served with the documents put before the Court and there was an affidavit of service upon them (sworn by Mr. David Hickey) before the Court. The orders previously made were again renewed.

10. A hearing was scheduled for 21st May, 2019, but P.C. sent in an email at 5.33pm on 20th May, 2019 stating that by reason of ill-health, he would be unable to attend court at the wardship review scheduled for 21st May (the email also recorded that he had entered "a conditional appearance to contest the Court's jurisdiction"). Attached was a GP's certificate. By reason of this communication, Kelly P. adjourned the review for two weeks until 4th June, 2019. Ms. Kelleher (solicitor for the HSE) wrote to Mr. P.C. saying that "the Court will hear what representations you wish to make in relation to the evidence that has been submitted to the Court and which was contained in the Book of Pleadings served on you on the 15th May 2019". The letter also indicated that if Mr. P.C. wished to file an affidavit, it should be served at least four clear days before the court hearing. No such affidavit was filed by or on behalf of Mr. P.C. However, at 10.27am on 4th June, 2019 (the date of the hearing), Mr. P.C. sent in a lengthy email (including copies of emails he had sent to parties including the Attorney General and the Human Rights and Equality Commission), stating that he would not be attending court that day. This email was put before the President on 4th June, 2019. On the same date, medical evidence was put before the High Court in the form of a report from Consultant Geriatrician, Dr. Norma Harnedy dated 6th May, 2019. Dr. Harnedy visited A.C. on that date. The report listed various medical conditions (including right and left hip fractures suffered by A.C. in 2015, epilepsy, cognitive impairment by reason of dementia, hearing impairment, osteoporosis with a history of vertebral fracture, depression and hypertension); and listed the (nine) medications being administered to her regularly. A.C. required a hoist and two carers for transfer to a chair (by reason of the previous hip fractures). She was doubly incontinent. It was Dr. Harnedy's opinion that she had no insight in the level of care she required. Dr. Harnedy expressed the opinion that it was in A.C.'s best interests to receive ongoing care at St. Finbarr's hospital because she required specialist nursing and medical care which could not be provided at home.

11. The Committee for the Ward, Ms. Patricia Hickey, swore an affidavit dated 13th May, 2019 describing her most recent visit to A.C. (25th April, 2019). Among other things, this

report clearly set out for the Court the views which had been expressed by A.C. to Ms. Hickey, namely that A.C. wanted to go home, that she was being kept against her will, and 'they' were putting poison in her food.

12. The Court was also furnished with a detailed nursing report dated 7th May, 2019 from Ms. Maura Twohig, Director of Nursing at the hospital.

13. Mr. P.C. and Ms. V.C. were on notice of the hearing of 4th June, 2019 but chose not to attend. A handwritten letter from Ms. V.C. dated 27th April, 2019 was shown to the Court (affidavit of Ms. Kelleher sworn on 7th May, 2019). It complained about the condition of her mother's ears and alleged that she was suffering 'pure torture'.

14. Having considered the evidence, the President of the High Court renewed the orders previously made. The order authorising A.C.'s continued hospitalisation of this date (4th June, 2019) is the current order authorisation her detention and is the central document in this Article 40.4.2 inquiry.

15. After the hearing, Mr. P.C. sent an email in which he asserted, among other things, that the President had no jurisdiction to deal with the case because he was *functus officio* and acting *ultra vires*, and that the Supreme Court was now seized of the matter. He said that he would be "at liberty to notify the Oireachtas" if he considered that the actions of the President of the High Court amounted to "stated misbehaviour". In an earlier email to Ms. Kelleher dated 20th May, 2019, he had asserted that his mother was being "tortured by her proxy Judge Kelly at the behest of the HSE and Comyn Kelleher Tobin Solicitors", that he would have "no difficulty in seeking your firm's sanction, and the same goes for your barristers" and that he would not "hesitate to prosecute you professionally for concocting and lying, and criminally for aiding and abetting the torture of my mother". The Court deprecates the use of such language and threats.

16. Under the current procedures operated by the President of the High Court in wardship cases, and in respect of A.C.'s case in particular, it is the situation that all parties affected by the orders have liberty to apply to the President of the High Court on 72 hours' notice to the HSE and the Committee. At no stage did Mr. P.C. file any evidence contesting the medical and nursing evidence furnished by the HSE or the Committee. This was presumably because of his strongly-held (although in my view erroneous) opinion that the President of the High Court was acting without jurisdiction (discussed below) and that his best course of action was to make applications pursuant to Article 40.4.2 instead.

17. At the time of writing this judgment, the next review hearing before the President of the High Court in the wardship proceedings is scheduled for 20th November, 2019.

18. Accordingly, the temporal scope of this judgment is effectively the period from August 2018 to July 2019, as the period of time up to that was already the subject of judicial decision and was under appeal to the Supreme Court. Nonetheless, while the time period was different, there was overlap in terms of the content of Mr. P.C.'s submissions.

The alleged gap in orders made by the President exercising the wardship jurisdiction

19. Mr. P.C. submitted that there was a gap in the wardship orders which rendered subsequent wardship orders invalid. He based this upon a submission that the President had adjourned the case overnight and failed to renew the existing orders relating to the case. I will address the factual basis for this submission below. However, even if it were the case that there was a gap in the orders, it was made clear by the Supreme Court decision in *E.H. v. Clinical Director of St. Vincent's Hospital* [2009] 3 IR 774 that in the context of a person detained under mental health legislation, even if there were a period of unlawful detention, this would not have a "domino effect" on a subsequent period of detention. The Supreme Court said that mere defects in a patient's detention, without more, should not give rise to a claim for unlawful detention where the defect had been cured, and that only in cases where there was a "gross abuse of power of default of fundamental requirements" would a defect in an earlier period of detention justify release from a later one. The reasoning of the Supreme Court in this regard applies with equal force to the situation of a person in detention pursuant to an order made in wardship. Therefore, even if Mr. P.C. were factually correct that there had been a one-day gap in the continuity of the wardship orders by reason of the one-day adjournment of the wardship review in October 2019, this defect would in any event have been cured by the subsequent order made by Kelly P. on the very next day. The order on foot of which A.C. is currently detained is his order of 4th June, 2019, which authorises the continued hospitalisation of A.C., and I am satisfied that even if there had been a gap overnight in the continuity of the orders of the President of the High Court in October 2018, this would not render defective the order he made on 4th June, 2019 through some kind of "domino" efect. The relevant portions of the Supreme Court decision in *E.H*. are set out at paragraphs 47-50 inclusive of the judgment. The point was made again by the Supreme Court in its recent decision of 17th October, 2019 (*A.C. v. Cork University Hospital & Ors* [2019] IESC 73) in Mr. P.C.'s appeal at paragraph 364, when it said:

> "Since the jurisdiction to make protective orders in the wardship jurisdiction exists once the wardship proceedings have commenced, it is possible to distinguish between the order taking into wardship and the orders made thereafter. Thus, if the order of the 19th August 2016 was invalid, it does not necessarily follow that every order made since then was unlawful."

20. The Supreme Court then proceeded to apply the principle, saying at paragraph 365:

> "I have to come to the conclusion that, as operated in this case, the process concerning Mrs. C. was flawed in respect of the original order, but that the orders made thereafter were fully lawful".

21. For completeness, I should say that I am not persuaded that there was, in any event, a gap in continuity as between the orders in wardship. Having listened to the digital audio recording of the business before the President on 8th October, 2018 in open court during the course of the hearings on this application, the following is my description of the sequence of events on the afternoon of the 8th October, 2018 in Court 4 before the President, who was dealing with wardship cases on that occasion. The case of A.C. was

one of the cases in the list that day. Coming up to the close of business, at 15.51.47, case number 28 in the list was called. Mr. Paul Anthony Dermott SC indicated that he appeared for the HSE. By reason of the reporting restrictions in respect of that case, I cannot here set out the surname of the ward in that case or that of her family members; but as it happens, the surname of that case (case number 28) also begins with the letter "C". A number of members of the C family in number 28 on the list were present in Court and interacted with the President between 15.51 and 16.11, when the Court finished for the day. As I have indicated, this case (number 28) was taken up by the President at 15.51.47. Initially, counsel started to speak about affidavits and timetabling issues, but at 15.53.19 the President interrupted counsel to say that "for the benefit of others", this was the last case he would be dealing with that day, and that the other cases in the list were to stand over into the next day at 11am. At that stage, he made no reference to any orders being continued. He did not mention the names of individual cases either; he simply referred to "other cases in the list". At 15.53.36, after that brief interruption from the President, counsel continued to address him in relation to case number 28. Members of the C family in case number 28 then addressed the President. The President was unable to finalise dealing with that case and adjourned it into 11am the following morning. He finished dealing with number 28 and its adjournment at 16.11.11. I note that at 16.08.18, while still dealing with case number 28, the President, while addressing one of the family members in that case, stopped and repeatedly said "Excuse me" and then said "Mr. C [using a surname which is the same surname as that of Mr. P.C. in the present case and which was not the surname of the family member in number 28], leave that gentleman alone, it's none of your business". It sounds as if Mr. P.C. (the litigant in the present case) had decided to speak to a family member in case number 28 while the Court was dealing with number 28, and that the President noticed this and was telling him to desist. If this is indeed a reference to Mr. P.C., it indicates that he was present in court at that particular point in time which was at 16.08.18.

22. Immediately after the President had adjourned number 28, and specifically at 16.11.12, the President announced that "*any other cases in the list that require continuation of any orders, they are now continued until tomorrow and they will be taken up tomorrow; so orders in other cases will be continued*" (emphasis added).

23. Mr. P.C. sought to persuade me that no order had been made in the A.C. case by the President on that date. It is correct that the A.C. case was not specifically mentioned by name, and it is also correct that no order was made the first time the President mentioned the adjournment of all the cases in the list (at 15.53). However, at 14.11, the President clearly stated in open court that orders in respect of any other cases in the list were being continued until the next day, and the case of A.C. was one of those cases. I am satisfied that this constituted the renewal of orders in all cases which were in the list and had not been reached that day. There was as a matter of fact no gap in the orders.

24. In any event, as I have already stated, the more important point is that *even if there had* been a minor gap in continuity by reason of the case being adjourned overnight, the

decision of the Supreme Court in the E.H. case indicates that such a minor defect would not be of such a nature as to render invalid the subsequent orders of the President.

The commencement of the 1924 Act

25. Mr. P.C.'s second submission was that the Courts of Justice Act, 1924 ("the Act of 1924") had never been validly commenced and therefore the jurisdiction of the President of the High Court in wardship did not exist. This submission was flawed in two respects. First, it depended fundamentally on the starting premise that the jurisdiction in wardship is dependent on the jurisdiction having been *transferred* from the Lord Chancellor to the current High Court (specifically the President of the High Court) *via* a chain of legislation which includes the Courts of Justice Act, 1924, which Mr. P.C. asserts was never validly commenced. 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) on Mr. P.C.'s appeal at paragraphs 216-218, and paragraphs 227-8 of its judgment. That decision also rejected Mr. P.C.'s second submission, namely that the Act of 1924 had not been validly commenced (see paragraphs 212-215 of the judgment). It would be surprising, to say the least, if the authorities in 1924 had accidentally neglected to bring into force important portions of this significant piece of legislation in the early founding years of the State and that nobody had noticed this until Mr. P.C. undertook his researches in 2019.

The submission that the President of the High Court was *functus officio* and had no jurisdiction to review his own orders

26. Mr. P.C. submitted that once a court has given a decision, it is *functus officio* and that it is not entitled to review its own decisions thereafter; and that any further review of its decision must be another and superior court by way of appeal or review. He uses this submission to suggest that the President of the High Court had no authority to review and make orders on a continuing basis in respect of A.C. in the exercise of his wardship jurisdiction. Mr. P.C. is of course correct that there is a principle that a court is *functus officio* once it has delivered judgment, but he is correct only insofar as that principle applies to a court decision on a particular finite issue which is capable of determination once and for all. However, the exercise of the wardship jurisdiction is of an entirely different kind; it is an ongoing process whereby the Court exercises a supervisory jurisdiction in respect of a person whose legal status has been determined as that of a ward by reason of their personal incapacity. The review is directed towards the ongoing care of the ward on the basis of his or her best interests and is not a review of the original decision in the sense of an appellate review. The Supreme Court has confirmed that periodic review by the President of the position of the ward is an essential safeguard within the system of wardship. For example, in the recent decision of *Health Service Executive v. A.M*. [2019] IESC 3, the Supreme Court, when listing the procedural safeguards in the exercise of the wardship jurisdiction at paragraph 100 of its judgment, specifically included the fact that orders for detention of a ward were subject to review

every six months by the President of the High Court. It is inconceivable that the Supreme Court would have described a procedure (the periodic review by the President) as a "safeguard" in circumstances where the President had no jurisdiction to engage in such a review. Again, the Supreme Court decision of 16th October, 2019 in Mr. P.C.'s appeal referred to the practice of reviews with approval (see for example paragraph 256 and 384). I therefore reject the applicant's submission that the President of the High Court had no jurisdiction to review the continued hospitalisation of A.C. and/or to make the order of 4th June, 2019 on foot of which this continued hospitalisation of A.C. is currently authorised.

The submission concerning equality of arms and/or fair procedures

27. Mr. P.C. made the complaint that he and his siblings have not had equality of arms in the wardship proceedings insofar as they have not had access to all the relevant documentation concerning the care of their mother. It is worth pausing to observe that this is a complaint of a procedural nature concerning the manner in which the wardship jurisdiction is exercised by the President of the High Court. It is then appropriate to pause also to consider the appropriate scope of an Article 40.4.2 enquiry. *In F.X. v. Clinical Director of Central Mental Hospital* [2014] 1 IR 280, the Supreme Court indicated that the High Court only had jurisdiction to inquire into the lawfulness of a detention ordered by another High Court judge (in that case, the Central Criminal Court) on foot of an order good on its face "*where there had been some fundamental denial of justice or other fundamental flaw*" (see paragraphs 64 and 65 of the judgment in *F.X.*). A number of leading authorities, including the *F.X.* case were considered by the Court of Appeal in the recent decision in *A.B. v. Clinical Director of St. Loman's Hospital* [2018] IECA 123, where the Court reached the conclusion "that the jurisdiction of the High Court in Article 40 applications is confined to ensuring that the admission or renewal order is valid on its face and that there was no violation of constitutional rights or other serious legal error in the making of the order." That this was the appropriate test was again stated in the Supreme Court decision of 17th October 2019 (*A.C. v. Cork University Hospital* [2019] IESC 73) in Mr. P.C.'s appeal (see paragraph 378).

28. In the present case, there is a High Court order (that of 4th June, 2019) justifying the detention of A.C.; there has no submission that it is bad on its face; and accordingly, the test I must apply was whether there was a "*fundamental denial of justice or other fundamental flaw"* prior to the making of the order. There is no evidence before me suggestive of such a fundamental denial of justice or other fundamental flaw. In the first instance, it ill-behoves P.C. to make complaints about how the process of wardship is conducted in circumstances where he has failed to attend or participate in those proceedings (because of his view that the President lacks jurisdiction to conduct those hearings). Secondly, what is clear, in terms of procedures, is that the President operates wardships hearings in accordance with significant safeguards which have been described *with approval* by the Supreme Court at paragraph 100 in their judgment in the *A.M.* case. The complaint falls far short of the legal threshold in Article 40.4.2 applications of this nature, as described in the *F.X.* case. Further, the Supreme Court in its decision of 17th October 2019 specifically approved the wardship orders made in respect of A.C. *other*

than the original order admitting her to wardship. This is clear from paragraph 378-384 of the judgment together with the Court's conclusion that "the claim of unlawful deprivation of liberty is not made out" (paragraph 398) as regards the 2018 orders (as distinct from the August 2016 order) made by the President. It dismissed Mr. P.C.'s appeal in this regard.

The submission that the certificate of detention is not valid because it was not made by the Minister for Health

29. The Certificate of Detention in these Article 40.4.2 proceedings was signed by Ms. Gabrielle O'Keeffe, Head of Social Care in the Health Service Executive, which stated that the ground of the detention of A.C. was the order of the President of the High Court made on 4th June, 2019. A copy of the order was appended to the Certificate. Mr. P.C. submitted that the Certificate of Detention was not valid because it not signed by the Minister for Health, in circumstances where P.C. had chosen to designate the Minister as the respondent to this application and the High Court (Noonan J.) had directed on 29th July, 2019 (when directing the enquiry pursuant to Article 40.4.2 of the Constitution) that the Minister ("the first named respondent") certify the grounds for detention.

30. I am satisfied that Mr.P.C.'s argument in this regard has no merit when one considers both the wording and the purpose of Article 40.4.2 of the Constitution and the role of the certificate procedure therein. Article 40.4.2 of the Constitution itself refers to "…the person in whose custody such person is detained". The purpose of the procedure is to provide a speedy method by which the High Court can be requested to examine the legality of a detention. The primary function of the certificate in Article 40.4.2 proceedings is to set out the claimed legal basis for the detention; in this case the claimed legal basis for the detention was the order of the President of the High Court dated 4th June, 2019. As a matter of fact, the immediate person having custody of A.C. is a hospital run by the HSE, and the order for detention was made by the President of the High Court. The Minister did not make the decision to detain A.C. It seems to me entirely appropriate in those circumstances that the certificate under the Article 40.4.2 procedure was signed by a person within the HSE who has responsibility for the hospital, and that it exhibited the order of 4th June 2019, thereby putting before the Court the relevant order pursuant to which A.C. is currently detained and which then became the pivot around which issues of legality could then be debated. Similarly, when an Article 40.4.2 application concerns a detention in prison or in a mental hospital, the certifier is invariably the governor of the prison or the director of a mental hospital - not the Minister for Justice or Minister for Health - and the law reports are replete with reports of cases in which the respondent was the governor of a prison or other custodial institution, the member in charge of a garda station, or the director of a hospital. Indeed, the usual practice is to name the immediate custodian as the respondent and to direct the order to that person, and undoubtedly the order of Noonan J. in respect of the Minister simply reflected the fact that Mr. P.C. had named the Minister as respondent. However, in circumstances where before the High Court, on the article 40.4.2 application, was a certificate from the immediate custodian of A.C. together with the High Court order authorising her detention, I am satisfied that the

substance of Article 40.4.2 has been wholly complied with even though it is not technically in compliance with the order of Noonan J.

31. I am also of the view that the naming of the Registrar of the Wards of Court as a respondent was entirely inappropriate. His duties are of an administrative nature only and by direction of the Court. He made no decisions in respect of A.C., nor does he in respect of any other ward. He should not have been made a party to the present application.

Conclusion

32. For the reasons set out above, I refuse the application pursuant to Article 40.4.2 of the Constitution seeking the release from hospital of A.C.

33. I also wish to record my disapproval of the conduct of Mr. P.C. during the hearing before me insofar as he, to borrow the words of the Supreme Court in its judgment of 17th October, 2019, "seeks to characterise almost all of the evidence tendered on behalf of the other parties as false" and "makes allegations, not only against the medical, nursing and caring staff but against legal practitioners, registrars, judges and the compilers of court transcripts". Mr. P.C. has been given the opportunity to make submissions to the superior courts of this country on a significant number of occasions and has been afforded considerable latitude in the making of his submissions because he is a litigant in person. It is regrettable that he has used that opportunity to make allegations about the motives and conduct of many people which I consider to be utterly without foundation.

34. Further, Mr. P.C. made his application pursuant to Article 40.4.2 to the High Court at the end of July 2019 in circumstances where his appeal to the Supreme Court had already been heard in May 2019, and when judgment was pending in the Supreme Court; in circumstances where (a) essentially the same fundamental issue (namely his mother's continued hospitalisation) was in issue in both sets of proceedings and (b) he had actually argued many of the same legal points about the wardship jurisdiction in the Supreme Court in May 2019; and then brought the same points to the door of the High Court in July 2019. In this regard I note the comments of the Supreme Court at paragraph 400 of their judgment when they say that the principles of abuse of the court's process apply to Article 40.4.2 as in any other litigation, and that "it should be borne in mind that the judge who receives a complaint is not obliged to direct an inquiry if the complaint is manifestly baseless". The High Court takes seriously its duty to conduct speedy inquiries when Article 40.4.2 is invoked, but the procedure should not be abused and it should not employed where an appeal on the same issues has already been heard elsewhere unless there has been some material change of circumstance in the interim period which raises a new legal issue.