

THE HIGH COURT

WARDS OF COURT

[WOC 6681]

IN RE A WARD: GENERAL SOLICITOR (J.C.)

RESPONDENT

Ex tempore ruling by Mr Justice Heslin delivered on 6 December 2023

1. As I said earlier, when Ms. Butler (Deputy General Solicitor for Minors and Wards of Court) began her very helpful submission, I want to welcome Mr. C, who is participating 'online' accompanied, as I understand it, by his key worker, Ms. G, and both are very welcome.

The 2015 Act

2. This application is taking place in circumstances where s. 55 of the Assisted Decision Making (Capacity) Act of 2015 ("the 2015 Act") concerns declarations following review and discharge from wardship.

3. In other words, we are here because of an application for Mr. C to exit wardship under the 2015 Act. In brief, this Court has, under s. 55 of the 2015 Act, a range of declarations which, depending on the circumstances, it can make.

Declarations

4. These are, in summary, to declare that someone in Mr. C's position (i) does not lack capacity, or (ii) that a ward of court lacks capacity unless the assistance of a suitable person as a co-decision maker can be made available; or (iii) that the ward of court lacks capacity even if the assistance of a suitable person to act as co-decision maker is made available.

5. If the third of those options applies, s. 55 (5) (b) provides that this court:

"order that the property of the former ward be returned to him or her upon the appointment of a decision-making representative in respect of the former ward".

Facts in this case

6. Turning then to the specific facts in this case, Mr. C (whom I will also refer to in this ruling as "the respondent") is a gentleman aged 53. He was admitted to wardship on 22 October 2014. The General Solicitor for Minors and Wards of Court is committee of his person and estate, and Ms. Butler moves the application today.

7. The respondent has, since 2011, resided at a certain group home operated by a certain care provider. According to the evidence before the court, he has a diagnosis on the autism spectrum as well as a reported intellectual disability and he is someone who is largely non-verbal.

The applicant's motion

8. On 24 August 2023, the Committee (i.e. the General Solicitor) gave notice of their intention to apply to this Court for a declaration under s. 55 of the 2015 Act in relation to the respondent (whom the 2015 Act calls the "relevant person").

9. Ms. Fionnuala Burke is a solicitor in the office of the General Solicitor, and she swore an affidavit grounding the application (also called a "motion") and she did so on 9 October 2023. In that affidavit, Ms. Burke sets out the relevant backdrop, including the respondent's reported diagnoses; the circumstances giving rise to admission to wardship; his current situation and placement.

Correspondence to relevant parties

10. She also refers to correspondence which was sent to a range of parties in relation to the present process. Her letters were sent to (i) the respondent; (ii) to Ms. M, who is the 'person in charge' of the respondent's placement; and (iii) to Ms. G, his keyworker.

Report by consultant psychiatrist

11. The court also has the benefit of a detailed medical report of 5 September 2023 which was prepared by the court medical visitor Dr. H., who is a consultant psychiatrist. Her assessment of the respondent was carried out on 4 September 2023. In that report Dr. H. states:-

"I employed the Diagnostic and Assessment Triangulation Method of speaking to [the respondent], reading the care plan and risk assessment and speaking to care staff on duty at the time of my assessment".

12. Under the heading of "Name, nature and symptoms of the illness", she reports:-

"The respondent has severe autism. He is non-verbal. He has never been known to have spoken words. He makes occasional manual signs for what he wants. He has inattention, inappropriate social behaviours, sticks rigidly to a routine and is preoccupied with a couple of interests. Autism is described in the Diagnostic and Statistical Manual of Mental Illness (DSM V American Psychiatric Association, 2016)".

13. Later, Dr. H. goes on to say:-

"[The respondent] has Level 3 Autism – severe, according to the DSM V criteria."

14. Later still she states:-

"I recall from my previous assessment of [the respondent] for Office of Wards of Court that his devoted mother had done her best to manage his uncontrollable eating by locking the kitchen and indeed other restrictions to try and manage things as best she could. He had been spending time mostly lying naked on a mattress on the floor when social workers

stepped in to help him. This resulted in [the respondent] becoming a ward of court and being admitted to [the care provided]"

Personal Welfare

15. Turning then to the question of decisions in relation to health, namely, care and treatment, Dr. H's view is:-

"[The respondent] could not understand, retain, use or weigh information or communicate any decisions about his health"

16. In relation to the questions of welfare and supports required for activities of daily living, Dr. H's evidence is:-

"[The respondent] could not understand, use or weigh information or communicate any decision about his welfare".

Property and affairs

17. In relation to the question of property and financial decisions, the doctor states:-

"[The respondent] could not understand, retain, use or weigh information or communicate any decision about his property and financials".

18. She goes on to report as follows:-

" [The respondent's] mother was currently resident in a certain nursing home [address given] a short drive away, and [the respondent] visited her almost every Sunday. [The respondent] had 2:1 attention from health and social care workers. The care plan outlined that he enjoyed swimming, going on walks, driving places and having an ice cream.

I was particularly pleased when I telephoned to arrange my visit that the person in charge, [Ms M.], was completely familiar with [the respondent's] schedule and advised me to attend at 5:30 as that would work best for him.

She explained that he went out every day with staff and returned home at 5 p.m., ate something and then went to relax in his bedroom".

19. Later, Dr. H. reports:-

"The bedroom and the whole house were lovely, clean, bright and furnished comfortably. He now had a bedframe on which his mattress was placed. There was a large sunny back garden onto which the bedroom looked. The kitchen and other living areas were pleasant and clean also. [The respondent] looked very well indeed, slim, well-groomed and contented in his appearance. He seemed to feel very well living there. The staff I met were uniformly pleasant and calm people.

[The respondent] *looked dramatically better than when I saw him some years ago immediately after he had been admitted to [the care provider]. This was a medical visitor assessment for the purposes of the wardship application. It was a complete transformation from [the respondent] lying overweight and naked on a bare mattress in his bedroom to him becoming an engaged member of society who was nearly too busy to see me*".

20. Moving, then, to Dr. H.'s recommendations for discharge, she states:

"[The respondent], *a ward, lacks capacity even if the assistance of a suitable person as co-decision maker were available to him*".

55 (1) (b) (ii) of the 2015 Act

21. I pause to say that this evidence reflects the appropriateness of a declaration being made pursuant to s. 55 (1) (b) (ii) of the 2015 Act.

No suitable DMR

22. Returning to Ms. Burke's affidavit, from para. 14 onwards she makes averments in relation to the respondent's assets which are detailed in a Schedule, which she exhibits. Her affidavit concludes with the following averments, and (I quote) at paras. 18 and 19:-

"18. *In circumstances where there appears to be no suitable person willing to, or in a position to act as a decision-making representative for [Mr. C], I respectfully request the court to ask the Director of the Decision Support Service to nominate two or more persons from the panel established under s. 101 of the 2015 Act.*

It is submitted in light of the observations and conclusions in the report of Dr. H. it would be appropriate for any decision-making representatives to make decisions about [Mr. C's] healthcare, welfare, property and finances but always subject to the obligations as set out in ss. 8 (7) and (8) of the Act."

Section 8 (7) and (8) of the 2015 Act

23. I pause here to say that those sections require the decision making representative (or "DMR") to encourage and facilitate input from the respondent insofar as possible; and entitle the DMR to consider the views of those caring for or having a *bona fide* interest in the welfare of the respondent, and this includes healthcare professionals.

Service

24. The court also has the benefit today of an affidavit sworn by Ms. Corona Grennan, solicitor, on 29 November 2023, from which it is clear that all service issues have been properly attended to.

The respondent's wishes

25. Among other things, Ms. Grennan avers that she explained the contents of the motion papers to the respondent in simple language in the presence of Ms. M, the manager of his placement. Ms. Grennan also makes, among other things, the following averments:

"I say that [Ms. M] advised that it is the staff's understanding that the respondent understands in basic terms what is being said, and when I queried whether he would have understood what I discussed with him, she said that this was difficult to assess, but she said that he certainly had not objected to any of it and that we would have been aware if he was objecting to anything that was being said. I say that I advised [the respondent] of the fact that the medical visitor stated in her report that he appeared to be very happy in his placement and he did not appear to object to this. I say that I discussed [Mr. C's] attendance in court with [the respondent] and also with [Ms. M]. However, he did not give any indication of his wishes and I could not ascertain his wishes."(emphasis added)

26. The respondent has decided, and I am very glad that he has, to participate 'remotely' in today's hearing.

Independent Social Worker

27. Ms. Burke also avers, among other things, that her office engaged Mr. MC, an independent social worker, who met with the respondent on 18 July and who prepared a report which is dated 21 July 2023. In that report, which Ms. Burke exhibits, Mr. MC confirms among other things the following.

28. From para. 7, it is clear that Mr. MC attempted to meet with the respondent more than once and Mr. MC details that the furthest the engagement went was a handshake; for the respondent to look at Mr. MC, expressionless; and to "look him up and down" before leaving the meeting.

29. Mr MC states, at para. 8:-

"I spoke to [Ms. M] and [Ms. G] about the recent changes in wardship and the new 2015 Act. They were both of the view that [the respondent] had absolutely no ability to understand that he was a ward of court, understand anything about it, or to formulate or communicate any personal views or opinions".

30. Mr. MC states that he provided the 'Leaving Wardship' leaflet to Ms. M for staff information. However, he did not seek to discuss same with the respondent, as there was obviously no point in doing so. He concludes at para. 11 of his report that:-

"[The respondent] has extremely complex needs and very challenging behaviours. However, his behaviours appear to have lessened significantly over time. He requires a very structured routine as well as constant active supervision by experienced staff whom he knows and trusts, and who fully understand his needs and behaviours. [The respondent] has lived at his present address [location given] since 2011 and it is very much his home. He would appear to be appropriately placed there and well cared for in every respect".

Mr C's home

31. I want to pause now to make very clear that the decisions made by the court today are not going to affect in any way the respondent, Mr. C, continuing to live in his placement, which he would appear to regard as his home and which, according to the evidence, he is very well cared for in.

32. In circumstances where there was no DMR identified, for example by the respondent, the President of this Court approved the nomination as DMR of Ms. Q. According to her biographical details, she is a senior social worker with the Health Service Executive, and someone with almost 20 years of experience in clinical social work practice.

Conclusion

33. To conclude the ruling, in light of the evidence which I have touched on, I am entirely satisfied that it is appropriate for this Court to make **a declaration pursuant to s. 55 (1) (b) (ii)** that the respondent lacks capacity even with the assistance of a co-decision maker.

34. It is also appropriate, in light of the evidence, to make an order under **s. 27 of the Civil Law (Miscellaneous Provisions) Act 2008**, prohibiting publication which would or would be likely to identify the respondent. I confirmed, at the outset of the hearing, that such an order was being made.

35. It is also appropriate to order that the respondent be **discharged from wardship pursuant to s. 55 (5) (b)** and remitted to the management of his affairs, with the assistance of a DMR, namely Ms. Q.

36. Under the 2015 Act, this Court has all 'Part 5' powers, and against that backdrop, it is appropriate and reflecting the specific reporting in the affidavit evidence, in particular from Ms. Burke, to make orders authorising the DMR to receive the respondent's pension and to make an **order pursuant to s. 46 (6)** of the Act (which require the DMR to keep proper accounts and financial records of a relevant person's income).

37. Ms. Q, as **DMR, is authorised pursuant to s. 55 (4) to receive the assets** held on behalf of the respondent by the accountant of the Court of Justice.

38. It is also appropriate to make orders pursuant to **ss. 42 (1) and 42 (2) of the 2015 Act**.

39. There will be, as Ms. Butler explains, no changes in relation to the current situation, as regards the respondent's disability allowance.

40. I agree with Ms. Butler's suggestion that, given the relatively young age of the respondent, his **capacity should be reviewed no later than a period of two years from now**, and I will make such an order (**in accordance with s. 55A of the 2015 Act**).

41. I note also that the HSE is not seeking costs in relation to this application.

42. Having summarised the appropriate declarations and orders in 'headline terms', I note that the applicant is very helpfully going to furnish a draft to the Registrar.