

THE HIGH COURT

WARDS OF COURT

WOC 5978

IN RE A WARD: GENERAL SOLICITOR (RL)

Ex-tempore ruling by Mr. Justice Mark Heslin delivered on 21st March, 2024

Introduction

1. I want to formally welcome [Mr. L] who participated remotely in today’s application which is about him and about leaving wardship. I will refer to [Mr. L] as “the respondent” for the purposes of this ruling.

The 2015 Act

2. This is an application brought under s. 55 of the Assisted Decision-Making (Capacity) Act 2015 (“the 2015 Act”). The respondent is the “relevant person” under that Act.

Declarations open to the court

3. The role of the court today is to consider all of the evidence before it and, having done so, to make a declaration or declarations as well as to make orders. In relation to declarations, there are a range of possible options open to the court, depending on the evidence is before it. The three options are to declare that a respondent (1) does not lack capacity; or (2) lacks capacity unless the assistance of a suitable person as a co-decision-maker can be made available to them; or (3) lacks capacity even with the assistance of a co-decision-maker. If the third scenario is disclosed by the evidence, then the response by the court should be to appoint a decision-making representative, or “DMR”.

Facts

4. Turning to certain basic facts, the respondent is a gentleman in his 50s who has two adult children, and he is someone who lives apart from his wife. According to the evidence, this is a very tragic situation because the respondent suffered an acquired brain injury when he was the victim of an assault in 1998. He was admitted to wardship in September 2009.

5. Although an aunt, or aunt-in-law, had originally been his ‘committee’ in wardship, following her passing the General Solicitor for Minors and Wards of Court was appointed, in July 2014, as committee of the respondent’s person and estate.

6. He has resided at a certain address since 2011. He receives support there, including from the relevant mental health service as well as the community brain injury service. Additional help at home has also been arranged privately. Unfortunately, the respondent also has significant physical health issues.

Application before the court

7. The committee has brought today's application and did so by way of a motion issued on 12 October of last year. That motion (i.e. application) was grounded on (i.e. supported by) an affidavit (i.e. a sworn document) sworn on 19 February by Ms. Linda Harney. Ms. Harney is a solicitor in the Office of the General Solicitor.

8. Her averments, that is her sworn statements, set out relevant facts including as to the background, the respondent's diagnosis, his admission to wardship, his current circumstances and his needs.

Correspondence

9. Ms. Harney avers, from paras. 8 to 10, inclusive, of her affidavit, that correspondence regarding today's application was sent to the respondent himself and to other relevant parties, in particular, to [Ms. Mc] of the HSE's community brain injury team, [Ms. Mc] being the respondent's case coordinator who, on all accounts, has been a great support to him over the years. Correspondence was also sent to the respondent's wife. It is clear that she has long been, and remains, a great source of support to the respondent also. It is notable that she expressed a preference not to be a making any "money decisions" with the respondent.

Medical evidence

10. It is appropriate to turn to the medical evidence which is before the court. It is in the form of a very detailed report of 26 November 2023 which was prepared by [Dr. C] consultant psychiatrist, who examined the respondent on that date in his residence in the presence of his care coordinator [Ms. Mc]. It was plainly a detailed assessment which took some two hours. As regards the respondent's capacity in relation to decision-making in particular areas, [Dr. C] states, *inter alia*, the following in her report.

Property and finances

11. Under the heading of "*Decisions relating to Property and Finances*", [Dr. C] states, at para. 7.3 (and I quote):-

"[Mr. L] was unable to fully understand information relating to the various aspects of financial decision-making for example the need to plan and budget, the need to ensure security and stability of financial resources. He was unable to retain information relating to the entirety of his spending and was also unable to communicate all of the relevant information relating to his spending patterns. He displayed particular difficulties in using or weighing financial information, for example what factors might influence him to purchase or not purchase items or how he might manage impulses or urges to make purchases. He did not appear to be able to weigh factors such as the risk of exploitation by those occasionally lodging in his house. As a result of this there

was sufficient evidence upon which to rebut [Mr. L]’s presumption of capacity to make financial decisions.”

Health, care and treatment

12. As regards decisions relating to “*health, care and treatment*”, [Dr. C] states, at para. 5.1 (and I quote):-

“The key areas of healthcare decision making of relevance to [Mr. L] was that of medication management. [Mr. L] was able to confirm that he required a variety of medication but was unable to identify all of the medications which had been prescribed for him. His medication was stored in a locked cupboard on account of his previous impulsive overdoses.”

13. Later, she states:-

“His ability to understand the nature, purpose, likely effects and consequences of no treatment appeared to be limited. His ability to retain information relating to the safe use of medication was impaired as was his ability to use and weigh information relating to the consequences of not adhering to the prescribed doses of medication.”

14. Later still, she states:-

“He stated that his own will and preference was that another person should retain decision making power over his medication management due to his previous overdoses and ongoing impulsive tendencies. On balance and taking into account the longitudinal pattern of his impulsivity relating to medication decision making there was sufficient evidence to rebut [Mr. L]’s capacity to make decisions regarding medication management.”

Welfare and supports for ‘ADL’s

15. As regards “*Decisions relating to welfare and supports required for activities of daily living*”, para. 6, in particular, s. 6.3 of the report by [Dr. C], states, (and again I quote):-

“[Mr. L] appeared to have some understanding of information relating to his welfare needs and was able to retain and communicate this information. However his ability to use and weigh this information was significantly impaired, most likely as a result of his brain injury.”

16. And, later [Dr. C] opines:-

“As a result of his inability to use or weight this information, there was sufficient evidence upon which to rebut [Mr. L]’s presumption of capacity to make some personal welfare decisions regarding house occupancy and avail of supports with his activities of daily living.”

Respondent’s letter of 19 March 2024

17. The respondent signed a certain letter, dated 19 March 2024, a copy of which was handed to the court today, which is addressed to the Office of the Wards of Court. It

concerns the discharge of a certain balance of a mortgage on a particular property. [Mr. L] has said the same today in his submission to the court. However, that letter and expression cannot be accepted by the court as capacitous decision-making in the area of property and/or finances. Doubtless, it is a view sincerely held and expressed by the respondent, but the evidence puts beyond doubt his inability to make capacitous decisions in such an area.

'Instruction' cannot be acted on

18. Therefore, it is simply not open to the Wards of Court Office to act on that 'instruction' and, as is submitted very appropriately today by Ms. Butler, the Deputy General Solicitor, that issue will now be a matter for the DMR. This is in circumstances where, for the reasons outlined in this ruling, a DMR is the appropriate appointment to make. That is because the evidence, which I quoted from [Dr. C]'s report, speaks very squarely to the appropriateness of a declaration being made by this Court under s. 55(1)(b)(ii) of the 2015 Act, namely, that the respondent lacks capacity to make decisions in relation to his health, including care and treatment, as well as his welfare and his property and financial affairs, even with the assistance of a co-decision-maker.

Choice of DMR

19. Returning to the evidence before the court, I have also had the benefit of a second affidavit sworn by Ms. Harney on 4 March of this year, in which she makes clear that, by letter dated 1 December, the respondent was notified of the discharge recommendations and invited to inform Ms. Harney of anyone he trusted to perform the role of DMR, but he did not respond in writing to that request.

Assets

20. In relation to assets, at paras. 18 to 22, inclusive, of her first affidavit, Ms. Harney makes averments in relation to the respondent's assets which are detailed in an accompanying schedule and one of those assets concerns the property in respect of which the letter I have referred to was written.

Service

21. I have also had the benefit of an affidavit of service sworn on 13 March of this year by Ms. Ita Lyster, solicitor. It is clear from the averments in that affidavit that all service issues have been properly attended to during Ms. Lyster's meeting with the respondent at his home, which took place on 12 March last.

22. In the manner averred by Ms. Lyster, the only names suggested by the respondent as a potential DMR were those of his wife and [Ms. Mc], but neither were in a position to fulfil that role and there can be absolutely no criticism of them for that, given what is involved and the complexity and challenges of fulfilling the role in question.

Independent person

23. At para. 13, Ms. Lyster makes, among other things, the following averments:-

“I explained to the respondent that an independent person could be appointed by the court from the panel of decision making representatives who would be specially trained. I further explained that in all likelihood the transfer over to a decision making representative from his wardship committee would be relatively seamless and would make little difference to how his best interests and welfare are currently managed for him and he indicated that he was satisfied with this.”

No challenge to the medical evidence

24. What also emerges from a Ms. Lyster’s affidavit is that the respondent took no issue whatsoever with the views expressed by [Dr. C] and, indeed, expressed the view that [Dr. C] was correct. It is also appropriate to note for the record that no contrary medical evidence of any sort has been proffered or, indeed, sought by or on behalf of the respondent.

Uncontested

25. Therefore, the evidence of [Dr. C], which I have quoted from at some length, is entirely uncontested and the court can safely and, indeed, must rely on this. It is for this reason that the letter, which I have referred to, cannot be acted on by the Wards of Court Office.

No EPA

26. The averments include an averment, at para. 25 of Ms. Harney’s first affidavit, to the effect that there is no enduring power of attorney or advanced healthcare directive known to exist.

Nomination from panel

27. In circumstances where there was no DMR identified who could fulfil the role, the President of this Court has approved the nomination of [Ms. Q] to act as DMR and [Ms. Q] is an experienced social worker and an entirely appropriate person to fulfil that role.

Discharge recommendations

28. The discharge recommendation made by [Dr. C], which appears at paras. 9.1 and 9.2 of her report, is in the following terms, and I quote:-

“At the time of assessment there was sufficient evidence upon which to rebut [Mr. L]’s capacity to make decisions in the areas of health, welfare and financial affairs. [Mr. L] would continue to lack decision making capacity in these areas even if the assistance of a suitable person as co decision maker were made available to him.”

Declaration

29. In light of the evidence, it is appropriate for this Court to make a declaration pursuant to s. 55(b)(ii) of the 2015 Act, namely, that the respondent lacks capacity to make decisions regarding his health, personal welfare, and property and affairs, even if the assistance of a suitable co-decision-maker were made available to him.

Orders

30. In terms of orders, the applicant has, very helpfully, provided a draft. In summary, the appropriate orders to make are the following:-

- an order under **s. 27** of the Civil Law (Miscellaneous Provisions) Act, 2008, regarding reporting restrictions;
- an order pursuant to **s.55(5)(b)** of the 2015 Act appointing [Ms. Q] as the respondent's DMR in all areas covered by the Act, i.e. Personal Welfare, including Healthcare; and Property and Affairs;
- an 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 his DMR, [Ms. Q], subject to the obligations set out in **s. 8 subs. (7) and (8)** of 2015 Act;
- an order that the DMR be entitled to receive a copy of the pleadings in this application;
- an order that the DMR be authorised to receive the respondent's assets as detailed in the application and schedule; and to take all necessary steps to protect same;
- an order that the DMR account to the director of the Decision Support Service in accordance with **s. 46(6)** of the 2015 Act;
- an order, pursuant to **s. 42 ss. (1) and (2)** of the 2015 Act, that the DMR not be entitled to reimbursement of expenses, or to payment of remuneration, out of the respondent's assets; and that will ensure that appropriate reimbursement and remuneration is made from a different source.
- given the nature of the respondent's condition, an order pursuant to **s. 55A(1)** of the 2015 Act that his capacity be reviewed no later than three years from today's date.

31. I also note that the applicant is not seeking costs in this application, and I am very grateful for that,

32. Ms. Butler has paid tribute to the respondent's wife and to the great support that [Ms. Mc] has given him, and I want to echo that.

33. Finally, I would like to congratulate the respondent on exiting wardship.