

THE HIGH COURT

WARDS OF COURT

[2024] IEHC 237

[WOC 10315]

IN RE A WARD: GENERAL SOLICITOR (A.K.)

RESPONDENT

Discharge Ruling by Mr. Justice Heslin delivered on 10th April 2024

1. This application is about Mr.K leaving wardship and, just as Ms. Butler did at the outset, I want to extend the warmest of welcomes to Mr. K and to his interpreter and to the person in charge of his current placement. During this ruling, I will refer to Mr. K as “the respondent”. This application is brought under s. 55 of the Assisted Decision-Making Capacity Act of 2015 and the respondent is the “relevant person” under that Act.

The Court’s role

2. For those who may not be aware of the Court’s role today, its job is to consider the evidence before it and then to declare, in relation to certain areas of decision-making, that the respondent either (i) does not lack capacity or (ii) lacks capacity unless the assistance of a suitable person as co-decision-maker can be made available or (iii) lacks capacity even with the assistance of a co-decision-maker. If that third scenario is established by the evidence, it is appropriate for the court to appoint a decision-making representative or “DMR”.

3. In relation to specific facts in the respondent’s case, he is a single gentleman born in 1984 and, according to the evidence, he was very unfortunately involved in a serious road traffic accident in 2010 in which he suffered a profound brain injury which left him non-verbal and in need of care on a 24-hour, seven day a week basis. He was admitted to wardship in February of 2020. The General Solicitor is committee of his person and estate. He currently resides in a certain placement in the southeast.

The application

4. The committee has brought the present application by way of a motion, which issued on 16 May of last year. That motion was grounded on, i.e. supported by, an affidavit sworn by Ms. Fiona O’Dwyer, who is a solicitor in the Office of the General Solicitor. This affidavit sets out the relevant background and details the respondent’s current situation. Among other things, it is averred (i.e. sworn) that the respondent’s family, who had been involved in 2011 during the respondent’s stay in the National Rehabilitation Centre, are no longer particularly involved in his case. It is also averred that his mother is now deceased, unfortunately. His sisters both live abroad with limited contact, although there was a video call with a sister of the respondent on the occasion of his fortieth birthday recently.

Correspondence

5. In the manner explained in Ms. O'Dwyer's affidavit, at paras. 7 to 10, correspondence regarding this application was sent to the respondent and to other relevant parties, including his sister and the person in charge of his placement. This communication to the respondent included a 'reader-friendly' leaflet about leaving wardship.

Medical evidence

6. I have medical evidence before me today. It was provided by Dr. G. who is a consultant psychiatrist. He carried out an assessment of the respondent on 31 May 2023. Regarding the nature of the respondent's illness and his capacity in relation to decision-making in specific areas. Dr. G. states, among other things, the following and I am now quoting from his 5 June 2023 report:-

"The respondent sustained a traumatic brain injury in a road traffic accident. He suffered profound brain damage and he has required full time care since the accident. The respondent is unable to communicate due to his brain injury. He requires assistance with all activities of daily living and is transferred using a hoist."

Healthcare; welfare; property and financial affairs

7. In relation to decision-making in the area of healthcare, Dr. G. states that the respondent is unable to understand information related to healthcare decisions, unable to retain such information, unable to weigh up that information, and unable to communicate any healthcare decisions. Dr. G. expresses similar views in relation to the respondent's ability to make decisions in other areas, namely, in the areas of welfare and property and financial affairs. This evidence speaks to the appropriateness of the court making, today, a declaration under s. 55(1)(b)(ii) of the 2015 Act that the respondent lacks capacity to make decisions regarding his health including care and treatment; his welfare; and his property and financial affairs even *with* the assistance of a co-decision-maker.

Discharge recommendations

8. As regards recommendations for discharge from wardship, Dr. G. states, among other things, the following:-

"The respondent's condition is permanent and will not improve in the future. Due to the severity of his brain injury it is my opinion that he would require a decision-making representative order in the future following his discharge from wardship."

9. On the topic of medical evidence, I am entirely satisfied that there could be no possible prejudice arising as a consequence of the passage of time between Dr. G.'s assessment and report (the report being 5 June of last year) and the making of this application, given the permanent nature, unfortunately, of the respondent's condition.

High standard of care

10. I have also had careful regard to the contents of other medical reports, namely by Dr. C., general practitioner, of 22 December 2023 and Dr. M., consultant psychiatrist. It is clear from those that the respondent is currently receiving care to a very high standard in his current placement. I also want

to note that Ms. Butler has expressed particular thanks to Dr. O'S. for the "phenomenal care" which she provided to the respondent, and I want to echo that.

11. In the manner averred by Ms. O'Dwyer at para. 13 of her grounding affidavit, the respondent was notified of the discharge recommendations and no second opinion has been sought by or on behalf of the respondent. Therefore, the evidence which I referred to from Dr. G. is uncontroverted. From para. 19 onwards of Mr. O'Dwyer's affidavit, she makes averments in relation to the respondent's assets and, at para. 22 of her 15 March Affidavit, she avers that no suitable person has been identified to act as DMR. In these circumstances, the applicant seeks that the director of the Decision Support Service, or "DSS", make nominations as regards a suitable DMR. That is provided for under the 2015 Act and, in the manner I will come to, that has been done.

DMR

12. Ms. O'Dwyer also avers, at para. 23, that, in the present case, it would be appropriate for a DMR to make decisions concerning the respondent's personal welfare, including health; property; and his finances, and the evidence entirely underpins that and supports that application. She makes clear that the committee seeks the appointment of a DMR in those circumstances, subject to the obligations set out in ss. 8(7) and (8) of the 2015 Act. To explain, those sections require a DMR to encourage and facilitate input from a respondent insofar as possible as well as entitling 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

13. I also have the benefit of a very detailed affidavit of service sworn by Ms. O'Dwyer on 26 March of this year and, as Ms. Butler rightly submits, it is very clear from its contents that no service issues arise. In other words, service has been properly attended to. It is equally clear that, due to his condition, the respondent was unable to engage in any material way and unable to make any material response or express any views or wishes other than appearing to smile, including when Ms. O'Dwyer indicated that she was delighted to meet with him. At para. 24 of Ms. O'Dwyer's affidavit, it is averred that there is no enduring power of attorney or advance healthcare directive known to exist in relation to the respondent. Given that there was no DMR identified, the nomination of Ms. Alice Lanigan, an experienced solicitor and mediator, to act as DMR, was approved by the court and I want to acknowledge her presence here today and I am very grateful to her for that.

Declaration

14. To conclude this ruling, in light of the evidence which I have summarised, it is appropriate that this Court make, today, the following declaration, namely, pursuant to s. 55(1)(b)(ii) of the 2015 Act to declare that the respondent lacks capacity to make decisions regarding his health, personal welfare, property and affairs even if the assistance of a suitable co-decision-maker were made available to him.

Orders

15. In terms of appropriate orders, the applicant has very helpfully furnished a draft and, having carefully considered it, I am satisfied that orders in terms of the draft are appropriate. In summary, these include the following orders:-

- Under s. 27 of the Civil Law (Miscellaneous Provisions) Act 2008, an order prohibiting publication which would or would be likely to identify the respondent and that is an order I confirmed at the outset;
- An order appointing Ms. Lanigan as the respondent's DMR in relation to all of the aforesaid areas mentioned in the declaration, namely, all those covered in the 2015 Act;
- 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, subject to the obligations detailed in ss. 8(7) and (8) of the 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 various assets as detailed in the application. This will include to receive, on his behalf, the payment of the respondent's Department of Social Protection disability allowance, as well as assets held by the Accountant of the Courts of Justice in the committee account;
- Also to order that the Accountant of the Courts of Justice carry out the directions in the payment schedule;
- An order that the DMR account to the Director of the DSS in accordance with s.46(6) of the 2015 Act (CHECK)
- It is appropriate, given that this is a professional DMR being appointed, to make an order in accordance with s.42(1) and (2) of the 2015 Act that the DMR is not entitled to reimbursement of expenses, or to payment of remuneration, out of the respondent's assets; and
- Having regard to the evidence in relation to the permanent nature of the respondent's condition (and this is the only amendment to the draft) I am satisfied that it is more appropriate to make orders, in accordance with s. 55A(1) of the 2015 Act, that the respondent's capacity be reviewed no later than three years from the date of this order.

16. I am grateful to note that the applicant is not seeking costs in relation to the present application. The final words must be to congratulate the respondent on leaving wardship and to thank those providing care to him, very sincerely, for their dedication to and ongoing support of the respondent.