

THE HIGH COURT

CAPACITY

[2024] IEHC 397

Record No. H.MCA.2024.133

IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT

Between:

HEALTH SERVICE EXECUTIVE

Applicant

-and-

P.T.

(A WARD OF COURT REPRESENTED BY HIS COMMITTEE THE GENERAL SOLICITOR FOR MINORS AND WARDS OF COURT)

Respondent

Ex tempore ruling of Mr. Justice Mark Heslin delivered on 11th June 2024

1. Grateful to Ms Hill BL who moves today's application and to Ms McDonnell BL whose client supports it, and noting also what Mr Geraghty BL has said, I will proceed to give a ruling in relation to an application, which concerns a man in his 30s. According to the evidence before the Court, he is someone with a complex presentation and complex needs. The evidence refers to his diagnoses, including general learning disability, autism spectrum disorder and vulnerabilities. He is someone who was admitted to wardship in November of 2017 and the general solicitor is committee of the respondent's person and estate.

Orders

2. Today's application arises in circumstances, where on the 15th March 2024, this Court under its inherent jurisdiction, made orders which *inter alia* provide that the respondent continue to be placed and detained at a certain [redacted] placement where he has lived for some time. Given the nature of the orders made, which also entitle the manager of the placement to take all steps deemed reasonably necessary to ensure the respondent's safety and welfare, including the regulating of outings and visits, these orders are the subject of regular review.

3. I have the benefit, today, of what was then an approved affidavit (and Ms Hill confirms it has since been sworn and will be filed today) provided by Ms Katherine Kelleher, solicitor for the HSE. Ms Kelleher exhibits a 6th June report by Dr M, consultant psychiatrist, who describes the respondent's vulnerabilities and diagnoses and refers to a complex trauma history. Dr M makes clear that the respondent receives an individualised service with the [placement] involving a high level of staff support and close supervision, which is necessary to keep him safe and to ensure that he enjoys a reasonable quality of life, including access to the community. Dr M's report includes to say that the respondent spoke positively about his house and appears to have settled in well.
4. On the question of the appropriateness of supports and orders providing a legal framework for necessary supervision and restriction, Dr M states among other things: "*He continues to be at risk of unpredictable and challenging behaviours, which include verbal and physical aggression including self-injurious behaviours, aggression towards staff and property damage. He is also at risk of absconding. His behaviour support plan outlines recommendations and strategies to help staff to support [the respondent]*".

Lack of capacity

5. With regard to the respondent's capacity, and speaking directly to the need for the current orders to continue, Dr M's report includes the following: "*The respondent has a significant mental disability. It is because of his intellectual disability and autism that he does not have the ability to understand and weigh information relevant to decisions regarding his physical welfare, health, and financial needs. He continues to suffer from an impairment of capacity sufficient that he is not in a position to vindicate his constitutional rights, in particular his right to life.*"

Vindicating the respondent's rights

6. She concludes her report by stating: "*I believe it is reasonable and proportionate in order to vindicate his rights, keep him safe and keep others safe from him, that the orders most recently made on the 15th March should be continued.*"
7. I have also had the benefit of a detailed affidavit provided by Ms L, solicitor, representing the committee, the original of which Ms McDonnell has made clear has been filed in the office. Ms L is someone who also performed the role of independent solicitor in the context of a recent Part 10 review under the Assisted Decision-Making Capacity Act 2015 ("the 2015 Act").

Unusual situation

8. In summary, Ms L's affidavit explains in detail and in very cogent terms why the committee has not attempted to obtain the respondent's views. As Ms McDonnell makes clear, this is a very unusual scenario, but she makes equally clear in her submission, very appropriately and accurately, that the stance taken is evidence based. Given how unusual it is, it is important to note the basis for this approach. In summary, it reflects advice from the respondent's multidisciplinary team, which includes (i) Ms H of the placement, (ii) Mr R social worker, (iii) Dr M consultant psychiatrist, (iv) Ms F team lead and (v) Ms M, behavioural specialist.

9. As averred by Ms L, she attended the most recent multidisciplinary team meeting with those professionals, which took place on the 22nd February 2024. All members of the multidisciplinary team expressed concern regarding the potential adverse impact on the respondent of Ms L engaging with him in relation to court applications, which touch on his care and detention. All members of the team agreed that the respondent is unable to engage with Ms L or even understand the application and that this outweighs any visit being made to him given the distress that such visit would cause and how unsettled and upset the respondent would become.

Detrimental to the respondent's welfare

10. It is further averred that the multidisciplinary team members did not see any way in which the respondent would be in a position to process or retain or express a view in relation to relevant information, irrespective of how it was delivered to him, and the team felt that this would also be very distressing for him.
11. As Ms L avers, whilst the multidisciplinary team was very clear that they were not refusing her any appointment to meet with the respondent, they confirmed their professional views that it would be "*detrimental to his welfare*", given that his ability to engage is so extremely limited; his ability to process information is very limited and compromised; and given the level of distress that any discussion would cause him. Ms L also avers that she is not aware of any change which would necessitate a change in the approach taken since the February multidisciplinary team meeting. She also avers that this issue will be kept under review and that is the approach that the general solicitor also takes, as Ms L confirms. Ms L further confirms that she intends to attend the next multidisciplinary team meeting when the date is set.

Without the respondent's participation

12. In light of that evidence, I am very satisfied that it was entirely appropriate to proceed in the manner outlined by Ms L, namely, without the participation of such a vulnerable respondent. This is because, briefly put, (i) his challenges prevent him from participating in any meaningful way; and (ii) he would only be caused avoidable distress by insistence on participation.
13. It is also indicated that a report is hoped to be completed before the 14th July. Nothing turns on that for the purposes of today's review, given the clear evidence before it. Therefore, weighing up that evidence, I am very satisfied that to continue the current orders represents both a necessary and a proportionate response by this Court to ensure that fundamental rights of this very vulnerable individual are vindicated and protected, including his very right to life.

Regular review

14. Given the nature of the orders, they should of course be the subject of regular review and it is appropriate to note that these are orders, which in substance, were previously made under the court's wardship jurisdiction, but could not be continued given that part 10 of the 2015 Act did not address these specific facts in the present case.