

APPROVED

[2024] IEHC 698



THE HIGH COURT

BETWEEN

H.MCA.2024.0000500

MATER MISERICORDIAE UNIVERSITY HOSPITAL

APPLICANT

AND

CBA

RESPONDENT

JUDGEMENT of Mr Justice Nolan delivered on the 3rd day of December, 2024

1. The work of the inherent jurisdiction list is truly impressive. Following the enactment of the Assisted Decision-Making (Capacity) Act 2015 it was perceived that there was a lacuna in the manner in which persons who needed the protection of the court could be assisted (see *Child and Family Agency v. KK* [2023] IEHC 306 & and the Court of Appeal's decision [2024] IECA 242). The President of the High Court invoked the court's inherent jurisdiction to vindicate individuals' constitutional right to bodily integrity in circumstances where they lacked capacity.

2. Due to the list's heavy workload, that role is now dealt with by the President and four other judges. Every day there is an inherent jurisdiction list.

3. This involves the correlation of many different professionals, from clinical psychiatrists, psychologists, geriatric physicians and magnificent nursing care and social work specialists. It also has given rise to the growth of a body of inherent jurisdiction legal specialists including solicitors, who act as guardian *ad litem*, solicitors on behalf of the HSE and other hospitals and a specialised group of barristers who act both for the moving parties, the Applicants and the Respondents, the persons in need of the help of the court, and their Guardians.

4. I am hugely impressed by the hard work and diligence of all concerned. The court makes orders which are proportionate in their intent so as to ensure that the people of this State are safe.

5. All of that hard work could be thrown aside and damaged by the unthinking acts of a few and a breakdown of management systems. Sadly, that is what has occurred in this case.

6. In this case, an application was made for orders pursuant to the inherent jurisdiction of the court to protect the Respondent. She is a young woman who suffers from anorexia nervosa. Her BMI was falling dramatically. She was very close to death.

7. Having read the affidavit of Dr. C, I made orders pursuant to section 27 (1) of the Civil Law (Miscellaneous Provisions) Act 2008 prohibiting the publication or broadcast of any matter relating to the proceedings which could identify the Respondent as a person with a medical condition. I then appointed a guardian *ad litem* who has acted at all times extremely professionally.

8. I ordered that the Respondent continue to be detained at the Mater hospital and that certain doctors be her responsible clinicians. I also ordered a suite of orders which are normal in these types of cases.

9. The matter came back before me, when having read a supplemental affidavit from Dr. C. and heard from her court appointed guardian *ad litem*, I continued the orders.

10. These orders are, in essence detention orders, directing that the Respondent be detained in the hospital, pending further order of court. These are draconian orders and their impact can be extremely serious. It is for that reason that the court is very careful about the orders that it makes and relies heavily upon the medical and legal expertise which are before it to ensure that its orders are entirely proportionate. They are not a box ticking exercise.

11. This court would not make an order detaining a Respondent unless it had evidence, and strong evidence at that, that such an order was required, in order to protect the Respondent from herself or others thereby vindicating her constitutional rights. After all, it must be bore in mind that she has committed no crime, nor has she breached any court order or found to be in contempt of court.

12. All that changed when in breach of the court order, the Respondent was transferred to another hospital.

13. Her guardian *ad litem* attended the Mater hospital to meet her. She was told that she had been discharged the previous day. This was the first she had heard of it.

14. It fell to the solicitor for the Mater hospital to come to court and explain what happened. She is one of the most experienced and diligent solicitors who appears in this list. It was clear that she was very distressed at what had taken place. It was also clear that nobody in the hospital had been listening to her about the importance of abiding by the court orders up until the matter was back before the court.

15. As a result of what she told me, I directed that Dr. C. come before me and explain in person what had happened. This he did and he also swore an affidavit. In it, he explained that he was one of the Respondent's clinicians. Indeed, as I have set out above, he swore two affidavits in relation to her care and it was on the basis of those affidavits that the orders were made.

16. He was on leave for a week but prior to his departure he had spoken to a consultant in another hospital where she had previously been to see if they were happy to resume care.

17. During his leave, it would seem that another doctor, Dr. B, who had some involvement in her care, contacted a member of Dr. C's team to say that she was medically stable and no longer needed admission from a medical perspective.

18. Neither Dr. B, nor Dr. C's team, nor anybody in administration, indeed nobody other than Dr. C himself seemed to be aware of the existence of the court orders. On that basis, the Respondent was transferred.

19. What is also clear is that nothing had been done between her transfer to the other hospital and the court being informed of what had happened. It was not until I directed that Dr. C come before me to explain what happened, that a flurry of activity took place.

20. Quite frankly, this is a disgrace. The court orders were made at the instigation of the Mater hospital, and nobody was aware that it had occurred. The whole system depended upon one man, and when he took a break, it fell apart.

21. Dr. C explained that certain steps were going to be taken in the future to ensure that this would not happen again. Indeed, his affidavit had a paragraph headed "*future safeguarding steps by the hospital*". There is a management speak tone of these steps. There is reference to a patient flow department which will request an alert be placed on the hospital's bed management electronic system. The information would be included in daily nursing safety huddle meetings and an operations team's weekly update meetings.

22. I, rather foolishly, had assumed all of that was already in place. I had assumed that in the 21st century one of the leading hospitals in the State would have systems in place to be able to communicate to doctors and nurses the legal status of their patients.

23. The affidavit went on to say that the hospital was organising their internal auditors to conduct a desktop audit to determine whether any additional mitigating measures were needed

and were going to draft a standard operation procedure detailing an internal process to be followed from managing the communications and documentation stage; more management speak.

24. All of this sounds very fine, but quite frankly should have been put in place from the very outset. It is extremely disheartening that such basic steps had not be taken.

25. I mentioned in court about putting a sticker on a folder, and surprise, surprise a supplemental affidavit has been sworn saying that, at the suggestion of the court a warning sticker system has been created with a sticker placed on the front of all files pertaining to patients the subject of High Court orders.

26. Such steps would be taken in a gym. It is shocking that it has taken this case for the hospital to put in place simple, basic procedures. Of course, Dr. C should have notified his colleagues of the situation. But to place the preponderance of blame upon him would be a mistake. First and foremost, this was fundamental systems break down, the responsibility of which rests with the management of the hospital.

27. The effect of this illegal movement of the Respondent from the Mater hospital to the other medical establishment has been detrimental. Firstly, she was not made aware until the day before of her move. She has lost trust, she has become nervous and crucially her BMI has been affected. She deserves better.

28. As a result of this episode, the Chief Executive Officer of the Mater hospital has come to court and has given a personal undertaking to ensure that this never happens again. Just to be clear a personal undertaking is precisely that; it is an undertaking by her that no breach of a court order will ever occur again in relation to somebody who falls under the inherent jurisdiction of the court. If there is a breach of a court order, the next step would be an application for attachment and committal of the Chief Executive Officer to explain why she is in contempt of court and/or an application for the sequestration of the hospital's assets.

29. These applications are not box ticking exercises nor are they opportunities to free up a bed, they are very serious constitutional applications to deprive somebody of their liberty for the specific purpose of vindicating their constitutional right to bodily integrity in circumstances where they themselves lack the capacity to make such decisions.

30. I know that I do not have to remind the legal practitioners of the importance of them, but perhaps it is worthwhile reminding the medical community of the implications of such orders. The purpose of this judgement is not to punish the Mater hospital, but to ensure that all other Applicants in these types of proceedings understand their importance and ensure that they put in place appropriate systems in order that court orders are abided by.

31. In the circumstances I am prepared to accept the undertaking given by the CEO on her own behalf and on behalf of the hospital.