THE HIGH COURT

INTENDED ACTION

2025 122 MCA

[2025] IEHC 147

IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT AND IN THE MATTER OF AN APPLICATION FOR ORDERS PERMITTING THE ADMINISTRATION OF NUTRITION TO A PERSON DETAINED IN PRISON

BETWEEN

THE GOVERNOR OF A PRISON

APPLICANT

-AND-

[A]

RESPONDENT

Ex Tempore Ruling of Mr. Justice Heslin delivered on the 5th day of March 2025

1. Following submissions by Mr. McGillicuddy SC for the applicant, I made an order pursuant to s. 27 of the Civil Law (Miscellaneous Provisions Act) 2008 for reasons given previously [i.e. and Order prohibiting any party to the proceedings or any persons having knowledge thereof from broadcasting or publishing any information which would or could identify the Respondent, Mr [A], and directing that his name and place of incarceration be anonymised until further Order, subject to the entitlement of the DPP and/or the Respondent's legal representatives in the criminal

proceedings to bring the contents of the report of Dr [B] to the attention of the presiding Judge in any criminal proceedings relating to the Respondent).

Provision of nourishment and medication

2. This application concerns a man, aged [given] currently detained in prison on foot of a number of separate remand warrants which relate to ongoing prosecutions. The present application is made *ex parte* by the Governor of a certain prison and the application seeks *inter alia* orders which would permit the transfer of the respondent to a certain hospital or other appropriate clinical setting so that necessary and proportionate steps could be taken to persevere his right to life by the provision of nourishment, both food and fluids, despite the expressed wish of the respondent to refuse nourishment in all forms. Orders are also sought, again with a view to preserving life, which would permit the administration of medical, clinical and nursing treatment, despite the expressed wish by the defendant to refuse medication and treatment.

Interference with autonomy

3. The orders, if granted, would plainly constitute a significant interference with the respondent's autonomy. Against that background, I have very carefully considered the affidavit evidence proffered by Mr. [C], the Governor of the prison in question and Mr. [D], who is National Nurse Manager for the Irish Prison Service.

Respecting a prisoner's decision to refuse nourishment

4. I note, and it is appropriate to mention this at the outset, that the policy in the Irish Prison Service is that a prisoner's right to refuse nourishment should be respected, consistent with their individual rights to body integrity and self-determination. That respecting of rights is, of course, predicated on the individual in question having capacity to decide to refuse fluids and/or food and/or treatment.

5. Turning to the affidavit evidence, it sets out the relevant background and details in a very comprehensive and chronological manner the position from the 25th January of this year to today, in particular, as regards (i) the respondent's refusal of food and fluids; (ii) his medical status; (iii) various assessments of his capacity; and (iv) his expressed views.

Full hunger and liquid strike

6. On the important question of his own views the exhibits include (exhibit "EK5" to Mr. [D]'s affidavit) a handwritten note in which the respondent states:

> "*Dear medical professionals, end of life treatment only for myself, I am on full hunger and liquid strike, please respect my right to pass from this world asap. Thank you, much appreciated*"

7. The respondent wrote a further note, on the 14th February (exhibit "6") which begins:-

> "*I have advised my legal representatives* [and the relevant solicitors are named] *of my free well intentioned solid basis decision to pass from this world of my own accord via food and fluid refusal completely.*"

Prior application

8. In the manner Mr. McGillicuddy very helpfully explains, in terms of the chronology up to this point, an application was made in February which resulted in Mr. Justice Nolan appointing a guardian *ad litem,* Ms. Leahy, for the respondent. However no substantive orders under this Court's inherent jurisdiction were ultimately made.

Acceptance of nutrition

9. That was in circumstances where the respondent began accepting nutrition and, therefore, the previous application to this Court effectively came to an end, as of the 24th February.

Second refusal

10. However, and for a *second* time, the respondent refused accepting fluids or liquids. The papers before me include a further handwritten note, prepared by the respondent dated the 26th February and it begins:

> *"I am refusing to voluntarily consume food and liquid here indefinitely until such time as this State fully restores my liberty. I have resumed this stance due to the evil and self-harm this State is seeking to promote and pursue here via me. I request the High Court immediately to recognise the contempt of justice and illegal use of the entire workings of the State against me."*

11. I pause to say that, without this Court professing to having any clinical or medical expertise whatsoever, what is disclosed in that note is a belief which is not grounded in objective reality. In the manner I will come to, this is of significance insofar as the clinical views on capacity are expressed, in particular, as regards the respondent's ability to use and weigh up information to come to a capacitous decision.

The Respondent's views summarised

12. Remaining with the views expressed by the respondent, given how critical it is for this Court to understand and have regard to them, it is clear from the averments made by Mr. [D] including in particular at paras. 147, 148, 152 and 153 of his affidavit that the respondent's views can be summarised as follows:

- he wishes to continue food and fluid refusal until his liberty is restored;
- he does not want medical intervention and will continue to refuse same until he gets released;
- this is because he regards himself as being held illegally:
- he would eat and drink normally upon being released:
- he wanted to be left to die and will remain on hunger strike until his liberty is restored;
- he is amenable to hospital transfer, but not for any medical treatment.

13. Recent history is averred to and includes, as I say, the respondent's earlier refusal of food and fluid between the 11th and 17th February as well as this second refusal, which began as of the

25th February. It is also averred that the respondent has refused to take prescription medication since the 24th February.

Physical health

14. Given the nature of the orders sought it is important for the purposes of this ruling to note that the evidence addresses the respondent's physical health which on any analyses is deteriorating and has now reached a very grave and acute state.

3 March

15. In Dr. [E]'s report, which is dated the 3rd March, he states *inter alia* the following with regard to the respondent:

> *"He is weak this morning. He finds it difficult to raise his head from the pillow. He has taken sips of water and green tea over the past three days. This is the sixth day of the second episode of food and fluid refusal. He had not fully recovered from the first one. Irreversible organ damage may begin after seven days. He requires immediate rehydration and re-feeding should the court determine he lacks capacity*."

16. The respondent was seen by a nurse officer on the 3rd March, but refused to have a variety of medical checks and this is averred at para. 157 of Mr. [D]'s affidavit. The respondent was also offered, but declined, a review by the prison psychiatric service on the 3rd March.

4 March

17. In relation to a case conference which was held on the 4th March, it is averred at para. 159 that the respondent's ongoing lack of engagement with medical staff means that clinical observations cannot be carried out. However, medical staff have noted that the respondent is presenting as emaciated.

Irreversible organ damage

18. Recalling Dr. [E]'s evidence that irreversible organ damage may begin after seven days, yesterday the 4th March was day-seven of the respondent's second food and fluid refusal.

Capacity

19. Turning to the question of capacity which is, of course, central to the invocation of this Court's inherent jurisdiction, it is fair to say that views have been expressed by a number of clinicians. Mr. [C] very helpfully summarises the state of the medical evidence by means of the following averments, which I now quote:

> "*14. I note that the prison doctor, Dr.* [E] *has consistently expressed the view that the defendant has capacity to decide to refuse nutrition albeit as of the morning of the 5th March 2025 he considers that the defendant has lost all capacity for rational thought*."

15. Dr. [F], *prison psychiatrist, noted during his review on the 26th February that he had concerns about the defendant's capacity, but that he was unable to make a definitive determination due to the defendant's refusal to engage.*

16. In her report dated 4th March 2025 Dr. [B], *who is an independent consultant forensic psychiatrist, concluded that the defendant presented with acute mental illness in that he was exhibiting symptoms of a paranoid psychotic illness. She considers that such paranoid psychotic illness will cause an impairment of the mind, and that this, in her view, affects his ability to weigh up information.*

17. As regards his capacity to make decisions in relation to food and fluid refusal, she concludes that: '[b]ecause his decision-making is predicated on delusional beliefs, I am of the view that he lacks the ability to weigh information in a reasoned manner and this negates his capacity in this specific domain'."

20. Mr. [C]'s averments go on to include the following: -

"18. Similarly, the two doctors who reviewed the defendant in a [named] *hospital on the 7th February 2025, Dr.* [G] *and Professor* [H], *Consultant Psychiatrist, were of the view that the defendant lacks capacity in this regard because of a mental illness characterised by paranoid psychotic ideas."*

21. As to the necessity for and the proportionality of the orders sought, it is appropriate to quote as follows from para. 21 of the Governor's affidavit:-

"*21. These orders are sought reluctantly by me, but in the belief that they are necessary and proportionate to protect the defendant's right to life where his capacity is compromised at the present time due to mental illness or mental disorder. Given that the prison, like all other prisons in the State, does not have the facilities to ensure that the appropriate clinical treatment could be afforded to the defendant, orders are sought for the transfer of the defendant to an appropriate clinical setting for such treatment to be provided to the defendant*."

Deterioration overnight

22. It might be said that the difference in views between clinicians on the question of capacity are no longer very great at this stage. That is in circumstances where Dr. [E] stated the following in an email sent this morning, and I quote:-

"*The respondent's physical and mental health has deteriorated overnight. He is frankly psychotic now and <u>has lost all capacity for rational thought.</u> He advised nursing staff this morning that he would cease his food and fluid refusal if the court was to make 'a substantial financial offer'. He is refusing clinical assessments like blood pressure checks or urine analysis to monitor progress for potential kidney failure…In my opinion <u>he at risk of sudden death and requires refeeding and rehydration immediately</u>*." (emphasis added).

Any difference in views regarding capacity

23. To the extent that there remains any difference in views on the question of capacity to make a decision in relation to food and fluid refusal, and without intending any disrespect whatsoever towards Dr. [E], it seems to me that I can place somewhat greater weight on the views expressed by Dr. [B] which views I will presently come to. I say this for three reasons.

24. First, the particular specialism of Dr. [B] as a consultant forensic psychiatrist; second, the extremely detailed analysis which she has conducted and sets out in her report which runs to 21 pages - an analysis based on a 90 minute 'in person' interview with the respondent on the 1st March as well as a consideration of the 9 different sources of information identified at para. 2 on internal pg. 3 of her report. The third reason is that Dr. [B]'s views are consistent with those expressed by both Dr. [G], a consultant in emergency medicine, and Professor [H], a second consultant psychiatrist.

Functional approach

25. Turning then to Dr. [B]'s views, she plainly took a functional approach to the assessment of capacity and that, is of course, consistent with the approach outlined in the 2015 Assisted Decision Making Capacity Act. It is sufficient for present purposes to quote as follows from Dr. [B]'s report:

> "*On the matter of* [the respondent's] *current decision of food and fluid refusal, I am of the view that he was able to understand and retain necessary information as it pertained to his decision making. He is also able to articulate that he should he lapse into unconsciousness he does not want any active medical treatment to be administered, including forced feeding or fluids. He understands that a lack of medical intervention at this stage will ultimately result in his death*."

26. I pause to say that the foregoing addresses three out of the four essential elements in a functional assessment of capacity, and Dr. [B] proceeds to deal with the fourth, stating:-

> "*However, I am firmly of the view that <u>he was unable to weigh up relevant information to come to a reasoned decision because of his symptoms of acute psychosis</u>. It was evident to me throughout the 90 minutes of assessment that* [the respondent] *suffers from an impairment of the mind in the form of a paranoid psychosis. I noted that* [his] *distrust was all pervasive and his delusional beliefs all consuming. He repeatedly expressed a desire for The State or other government parastatals and their employees to stop persecuting him and was clearly distressed by his delusional belief system. He made it clear that his ultimate desire was to live at liberty in the community with his family but opined that if he could not be given his liberty he would rather die. He was not open to any suggestion that his persecutory beliefs were not a function of mental illness. In fact, he took great exception to his capacity being questioned or the suggestion that he suffered from a mental illness. His weighing of information as it pertained to food and fluid refusal was clearly anchored in delusional beliefs and not based on objective reality. His rationale was*

that he would prefer to die than continue to be subjected to unfavourable and malign treatment by the "State".

…in my opinion, [the respondent] *suffers from an impairment of the mind due to acute symptoms of mental illness. The impairment of the mind interferes with and impacts on his ability to weigh up available information. Specifically, his decision making in relation to food and fluid refusal is mediated by his complex persecutory delusional belief system, which when applicable to food and fluid refusal and related treatment decisions, endangers his life..."*

27. As I noted earlier, the views expressed by Dr. [B] are consistent with those of Dr. [G]. He, as I say, is a consultant in emergency medicine and clinical director of the Emergency and Acute Care Unit in a certain hospital. Dr. [G] saw the respondent on the 17th February and his report of the same date states among other things.

"He asks that we facilitate him, give him medications to help him die. I have explained that we are not permitted to do so. When asked why he wants to die, he stated it is because of government interference in his life. He sees Covid as part of this phenomenon. He wants to exit this world, which when clarified means to die, and to go to a better place. He feels that there is coercive control by government of citizens and himself specifically."

28. Dr. [B]'s and Dr. [G]'s views are also consistent with those of Professor [H], a consultant psychiatrist who assessed the respondent on the 16th and 17th February in a certain hospital and whose report of the 17th of February states among other things:

"*He has expressed a fixed belief that the Covid virus and the actions of the government to control the population directly followed his taking of a legal action against an employer some years ago. He believes his life was and is central to the occurrence of the Covid virus. He believes the government and other agencies, nationally and internationally, have pursued a campaign against him to supress and control him and that they have engaged in higher level communications and surveillance. He provided examples…*" and Professor [H] sets these out.

29. Later, the professor states *inter alia:-*

"In my opinion, [the respondent] *has evidence of an abnormal mental state examination with disorganised thinking and paranoid ideas that in my opinion are fixed, systemised, and of delusional intensity consistent with paranoid psychosis a significant mental illness.*

30. Again, consistent with Dr. [B], while Professor [H] goes on to opine that the respondent has capacity to understand and retain relevant information and to communicate a decision to refuse food, fluids and medications, he opines that the respondent does not have the capacity to use and freely weigh the decisions to accept or refuse fluids, food and other medical intervention that will sustain his life of prevent his demise. This is because, and I quote: -

"*He lacks capacity in this domain because of his mental illness. Paranoid psychotic ideas are precluding him from making a free choice to accept the fluids, food and medical interventions that would keep him alive, as to do so would mean having to further endure the experience of harassment, control and surveillance that has characterised his mental illness*"

Lacks capacity to make the relevant decisions

31. Insofar as there is any difference in medical views concerning capacity, it is no criticism of Dr. [E] to say that his views do not engage, specifically, with the effect of the respondent's psychosis on his ability use and weigh information. I am satisfied that weighing up all the evidence allows for a finding that the respondent is someone who at this time lacks the capacity, on a functional assessment, to make a decision regarding the refusal of food or fluids or medication.

The respondent's needs

32. The respondent is currently in the custody of the prison service, specifically, the prison escort service, and the fact is that the prison service does not have a facility to meet the respondent's needs and I'd observe that there is absolutely no difference of view between any of the clinicians as to what those needs are. Dr. [E] confirmed them very clearly (i.e. the respondent *"at risk of sudden death and requires refeeding and rehydration immediately"*).

Jurisdiction of last resort

33. Mr. McGillicuddy also, very helpfully, made submissions in relation to the appropriate invocation of this Court's inherent jurisdiction. The authorities make clear that it is certainly not a jurisdiction of first resort, it is the very opposite. It is a jurisdiction which exists to vindicate and protect fundamental rights where there is no 'statutory route' available. In that regard, I am very grateful to Mr. McGillicuddy who makes clear, with reference to s. 15(2) of the Criminal Law Insanity Act, that this statutory route is simply not available on the facts of the present case.

No statutory route available

34. In short, that is because the "designated centre" for the purposes of s. 15(2), namely, the National Forensic Mental Institution, or CMH, now in Portrane, is not in a position to provide the physical healthcare which the respondent urgently needs, because the CMH is not a general hospital.

35. It is also clear that the applicant has, very appropriately, applied his mind to the question of a statutory route. That is clear from the averments made by Mr. [D] at para. 166, and I quote:-

"*I can also confirm that work is ongoing to liaise with the Central Mental Hospital about the defendant's status on the waiting list for that institution. Assuming his physical health is protected, preserved and restored that it may be appropriate at some stage for the defendant to be returned to the named prison, the appropriate transfer order could then be made to the CMH under s. 15 of the Criminal Law Insanity Act 2006 if the relevant conditions for the making of such an order are satisfied at that time*.

Urgency

36. In short, this situation is most urgent; the respondent's position is very grave; his needs are acute; and they are currently unmet, due to his expressed views. However, on the evidence before me, the respondent is someone who lacks capacity to make the relevant decision to refuse nutrition, including liquids, and medical care.

Appropriate application

37. Given that he remains in the care of the State, it was entirely appropriate for the State to bring this application with a view to vindicating and protecting the fundamental rights of this vulnerable individual.

In conclusion

38. To draw this ruling to a conclusion, I am satisfied on the basis of the evidence before me that this is one of those unusual cases where substantive relief can and should be granted at the *ex parte* stage. The evidence, which I have tried to summarise, makes clear the basis for me granting, now, declarations in terms of paras. 1 – 4 of the *ex parte* docket. In summary, that is:

- a Declaration under this Court's inherent jurisdiction (which is engaged as a result of the evidence as to lack of capacity) that the respondent lacks capacity to make decisions regarding his immediate treatment, care, health, nourishment and welfare needs;

- a Declaration that the applicant is entitled and/or required to take such necessary and proportionate steps to preserve the right to life of the respondent;

- a Declaration that the respondent is in immediate need of an appropriate regime for the provision of nourishment, food, and fluids, notwithstanding his declared wishes to refuse this in all forms; and

- a Declaration that the respondent is in immediate need of an appropriate regime of clinical services, medical services, nursing treatment, and welfare services, notwithstanding his declared wishes to refuse all such.

On the evidence before me, making orders in terms of para. 7 and para. 8 is both a necessary and a proportionate response by this Court to vindicate and protect the fundamental rights of this vulnerable person who lacks capacity to make the relevant decisions. In summary, orders in terms of paras. 7 and 8: -

- permit the transfer of the respondent to a hospital or other appropriate clinical setting so that necessary and proportionate steps can be taken to preserve his right to life by the provision of nourishment including food and fluids to him as is necessary, notwithstanding his declared wishes to refuse nourishment in all forms; and, similarly, orders

- permitting the provision of clinical, medical, nursing and welfare services to the respondent, notwithstanding his declared wish to refuse this.

39. Grateful to McGillicuddy, I am also making an order in terms of para. 10 of the *ex parte* docket, namely:-

- an order directing that the orders herein, *supra,* will remain in force only for so long as are necessary to protect and preserve the respondent's right to life and/or pending further order of this Court.

Guardian ad litem

40. Arising out of the very helpful discussion I had with Mr. McGillicuddy earlier, I am satisfied that it is appropriate, given the nature of the relief which is to be sought in the motion on notice, that there should be a guardian *ad litem* appointed for the respondent. It is obvious why that could not have been dealt with in a preceding application. The urgency and deterioration overnight meant that that was simply not possible. I am going to appoint Ms. Leahy whom I note was appointed as guardian *ad litem* in the earlier application in February. I do so understanding that she has been kept updated on developments and, as I understand it, no objection has been communicated by or on her behalf [to such appointment]. There will be liberty to apply in relation to that aspect if there is, for any reason, a need for a different guardian *ad litem* to be identified. However, I think, given the nature of the relief being sought, it is entirely appropriate and consistent with natural and constitutional justice [that a Guardian *ad litem* be appointed, even though not a specific relief sought in the *ex parte* docket].

41. As to 'housekeeping', I am directing that all relevant parties can be given notice of the making of these orders by email and any other method which is efficient. By relevant parties, these include (i) the respondent, himself; (ii) his guardian *ad litem*; (iii) the H.S.E. which is a notice party; and (iv) the office of the solicitors acting in the context of the ongoing criminal proceedings would also seem to be a party that should be on notice, subject to any submission to the contrary.

42. That brings us then to a return date. These orders are made with a view to preserving life. That is the main objective and, given their nature, they do trespass significantly on autonomy. However, they represent the outcome of a careful 'balancing exercise' where a variety of constitutional rights are 'at play'. In crude terms, the right to life is taking precedence over the right to autonomy, given the evidence of lack of capacity.

43. I entirely agree that a return date it needs to be a short one, but it also needs to be long enough to allow the guardian *ad litem* to meet with the respondent for service; and (bearing in mind the focus of this application i.e. for life to be persevered) for the transfer to take place and for as such administration of nutrition (and this is a clinical matter) as is necessary to preserve life consistent with the orders made.

44. So it seems to me that a matter of days, certainly, but, subject to any submission to the contrary, I would be suggesting a day next week, with liberty to apply in the interim, consistent with para. 10.