

THE HIGH COURT

WARDS OF COURT

[2024] IEHC 378

[WOC 10820]

IN THE MATTER OF C.M., A WARD OF COURT AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 55 OF THE ASSISTED DECISION MAKING (CAPACITY) ACT 2015 (AS AMENDED)

RESPONDENT

Ex tempore ruling of Mr. Justice Mark Heslin delivered on 6th June 2024

1. This is an application brought under s. 55 of the 2015 Assisted Decision-Making Capacity Act ("the 2015 Act"). The respondent the "relevant person" under the 2015 Act. The Court's job today involves considering the evidence before it and declaring, in relation to relevant areas of decision-making, that the respondent either (i) does not lack capacity; or (ii) that he lacks capacity unless the assistance of a suitable person to act as co-decision-maker can be made available to him; or (iii) that he lacks capacity even with such assistance, in which case it would be appropriate for a decision-making representative or "DMR" to be appointed.

Certain facts

2. Turning to certain specific facts in the present case, the respondent is a widower and he was born in 1935. He was admitted to wardship in July of 2021 and the General Solicitor, whom Ms. Butler represents as Deputy, is committee of his person and a estate. The respondent currently resides in a certain community unit and has done so since December 2023, having been an inpatient in a certain hospital from May to December of 2023, prior to which he lived alone.

3. The committee's application is by way of a motion, which issued on 23 February of this year, and that motion is based on, or "grounded" upon, facts sworn to be correct in an affidavit furnished by Ms B., solicitor. That affidavit sets out, among other things, the relevant background; the respondent's health situation; his admission to wardship; his living circumstances and assets, etc. It is averred, among other things, that, very sadly, the respondent's son died some years ago and he is reported to be estranged from another son.

4. In the manner averred from para. 9 onwards, discussions took place and correspondence was sent to the respondent concerning this application. Correspondence was also sent to Ms. D. of the respondent's community unit replacement, Ms. D. being a social worker, with further correspondence sent to the respondent's niece. It is averred that no response was received.

Medical evidence

5. Turning to the medical evidence before the court, Dr. H., who is a consultant psychiatrist, carried out an assessment of the respondent on 13 March 2024. It is appropriate to refer to the views expressed by Dr. H. in relation to the nature of the respondent's illness and his capacity to make decisions in specific areas. Dr. H.'s report describes the respondent as having cognitive impairment such as to render him vulnerable and Dr. H. is of the view that his cognitive issues are probably age related. In relation to the specific area of *Health* (including care and treatment), the view of Dr. H. is that the respondent was unable to meet any of the requirements of the fourfold test for decision-making capacity and Dr. H., outlines the results of a functional assessment.

6. In relation to *Welfare* and supports required for the activities of daily living ("ADLs"), Dr. H. states that although [the respondent] presents as meeting the requirements of the fourfold tests for decision-making capacity as regards welfare and supports required for ADLs, his comprehension of his support needs and ability for independent living are based on understandable wishful thinking, rather than practical reality. As regards small day to day decisions (for example, what to wear) he has capacity, but as regards more complex decisions, (such as his ability to live independently) he does not understand relevant information; and he cannot retain information long enough to make a voluntary choice. By virtue of the foregoing, he cannot use or weigh information as part of the decision-making process. He can communicate a decision, but any such a decision is compromised by the foregoing deficits. Similar views are expressed as regards a functional assessment of capacity in relation to decision-making in the area of *Property* and *Financial* affairs.

Discharge recommendations

7. With regard to recommendations for discharge from wardship, Dr. H. states:-

"Despite my findings of [the respondent] having deficits in decision-making capacity in all areas, I think that he should be able to work with a co-decision-maker. I am aware that there have been problems in the past with a family member who offers him support due to misapprehensions on his part and this may indicate that a co-decision-making relationship would be fraught. But on the basis of our interaction and the collateral information supplied, I think this should at least be given a trial in order to maximise [the respondent]'s feelings of autonomy which he aspires to. I therefore declare that [the respondent] a ward of court lacks capacity unless the assistance of a suitable person as co-decision-maker is made available for him for decisions as regards health, welfare, and property and finance."

8. In the manner averred by Ms. B., at para. 17 of her affidavit, the respondent was notified of the discharge recommendations and was asked to think of a trusted person to act as co-decision-maker. It is also appropriate to note that no second opinion was sought by or on behalf of the respondent and no issue was taken with any of the views expressed by Dr. H.

9. From para. 21 onwards, Ms. B. makes averments in relation to the respondent's assets and these are detailed in a schedule which is exhibited. In summary, these comprise of certain social

welfare benefits; certain pensions; credit balances in a credit union and bank account, respectively; a share as a 'tenant in common' in certain property along with the respondent's late wife; and certain funds held in court.

Suitable co-decision-maker

10. On the question of the identification of a suitable co-decision-maker, the following averments are made at paras. 7 and 15, respectively, of the affidavit sworn by Ms. O'D. who met with the respondent on 1 May and effected personal service of this application in the company of the placements Director of Nursing and the clinical nurse manager as well as in the company of Ms. D., social worker. At para. 7, it is averred:-

"[The respondent] advised that he had thought about his niece becoming his co-decision-maker but that she lives a bit away and she probably would not want to look after his finances. I asked him if there was anybody else he could think of to be his co-decision-maker and he advised that the other person he could think of was dead and that would not be of any use to him and he gave a hearty chuckle after this statement."

11. At para. 15, it is clear that Ms. O'D. returned to the topic again later in their meeting and she avers:-

"Before I finished my conversation with [the respondent], I returned one last time to the question regarding if [the respondent] had anybody in his life who he would like to be his co-decision-maker and if it was the case that he did not, was he happy for the court to appoint a decision-making representative. [The respondent] advised that he was happy for somebody independent to be appointed to look after his affairs but they must take into consideration his wishes."

12. It is averred that Ms. D advised that it would make more sense for a professional decision-making representative to be appointed. Ms. D. mentioned [the respondent's] niece would be the only family member that might be in a position to do this role and, however, she advised that from her dealings with the respondent's niece, it was hard to get answers to specific requests and often they were left waiting a considerable time for requests to be actioned. Ms. D. advised that the respondent's niece was meant to be bringing in items for [the respondent]'s house but they were still waiting on these items, despite numerous reminders regarding same. Ms. D. felt, from a practical perspective, it would be better for [the respondent] to have somebody independent appointed.

The respondent's preference

13. I pause to say that, quite apart from the views expressed by Ms. D., it is very clear from the evidence that the will and preference expressed by the respondent is for somebody independent to be appointed as co-decision-maker, subject to a taking into consideration his wishes.

Independent social worker

14. As averred by Ms. B. at para 19 of her 26 April affidavit, the applicant also engaged an independent social worker, Mr. K., who met with the respondent on 7 February and I note the

contents of Mr. K.'s report of that date. That report refers, *inter alia*, to the respondent's vulnerabilities; his unhappiness of being a ward of court; the respondent's worries about his finances and about his home; and the fact that he appears settled and content in his community unit residence.

15. At para. 31, it is averred that there is no enduring Power of Attorney or advanced healthcare directive known to exist and that a will is lodged in the Wards of Court Office on behalf of the respondent, albeit that the validity of same or whether any other wills, exist are unknown.

16. Consistent with the expressed preference for an independent party to fulfil the role, the nomination of Ms. P., solicitor, has been approved by the President. In terms of qualifications, Ms. P. is a very experienced solicitor, well known to the court and someone with long experience working with persons with vulnerabilities.

Declaration

17. Drawing this ruling to a conclusion, in terms of the evidence, it is appropriate to make a declaration that the respondent lacks capacity unless the assistance of a suitable co-decision-maker is made available to him.

Orders

18. In terms of orders, the applicant has very helpfully provided a draft. I think it is important to chart a course in this ruling which reflects the various provisions in the 2015 Act. The evidence would allow for a declaration pursuant to s. 55(1)(b)(i) that the respondent lacks capacity unless the assistance of a suitable co-decision-maker is made available.

19. However, this is a situation covered by s. 55(4)(a) of the 2015 Act, i.e. where there is no suitable person in a position to act as co-decision-maker.

S. 55 (4)(ii)

20. Therefore, it is appropriate, in line with the provisions in the Act, to proceed as if a declaration had been made under section 55(1)(b)(ii) and, in consideration of s. 55(4)(ii) of the Act, to discharge [the respondent] from wardship and to appoint a decision-making representative or DMR but always subject to the requirements of s. 41(3) of the Act.

S. 41 (3)

21. S. 41(3) of the 2015 Act obliges the DMR to ensure, insofar as practicable, that decisions are made jointly with the relevant person. This brings me back to the evidence before the court averred to at para. 15 of Ms. O'D.'s 7 May 2024 affidavit, namely that [the respondent] was happy for somebody independent to be appointed to look after his affairs, but they must take into consideration his wishes. The orders being made today reflect exactly the respondent's expressed will.

22. The draft, helpfully furnished by Ms. Butler contains the appropriate orders but it is a necessary for the purpose of this ruling to summarise them. In summary, the appropriate orders,

as I mentioned at the outset, include a s. 27 order in relation to the prohibition of publication which would or would be likely identify the respondent.

23. In addition, it is appropriate to appoint Ms. P. as the respondent's DMR and to order that the respondent be discharged from wardship and remitted to the management of his affairs with the assistance of his DMR, subject to the obligations set out in s. 41(3) of the 2015 Act to which I have referred.

24. The DMR is entitled to receive a copy of the pleadings and papers in this application. The respondent is entitled to receive the assets held on his behalf by the Accountant of the Courts of Justice and the assets in the committee account of the General Solicitor.

25. It is appropriate to order that the Accountant of the Court of Justice carry out the directions contained in the payment schedule; and to order that the applicant make arrangements for the respondent to receive his Department of Social Protection payment directly.

26. The DMR is authorised and permitted to assist the respondent in taking all necessary steps to protect his interest in the property referred to in the application, and the DMR is also permitted and authorised to take all necessary steps to protect the respondent's interest in the estate of his late wife.

27. It is appropriate to order that the DMR account to the Decision Support Services Director in accordance with s. 46(6) of the 2015 Act.

28. It is also appropriate to make orders pursuant to s. 42(1) and (2) that the DMR is not entitled to be reimbursed from the respondent's assets in relation to either expenses or payment of remuneration and that is appropriate where a professional DMR is appointed.

29. Finally, taking account of the evidence, it is appropriate to order that the respondent's capacity be reviewed no later than three years from the date of the making of the order.

30. I am grateful to Ms. Butler who makes clear that no costs are being sought in the present application. That is the decision of the court and the reason for it. Finally, I want to congratulate sincerely [the respondent] on leaving wardship.