

THE HIGH COURT
IN THE MATTER OF I. V. M.
AND
G. M.

2009 177 MCA

RESPONDENT

APPLICANT

Judgment of Mr. Justice Hedigan delivered on the 30th day of October, 2009

1. The President of the High Court has directed by an order made herein on the 21st July, 2009 that the following issue is to be tried and determined:

"Whether the respondent I.V.M. is of unsound mind and incapable of managing her person and property."

2. Although the above determination may be made by a jury and therefore a decision may be delivered without explanation, where as here, the matter is to be determined by a Judge of the High Court sitting alone, it seems appropriate to me that the Judge should explain the reasons for that decision. Moreover, in the course of the two days involved hearing this application, certain matters were resolved by me and it seems appropriate that those matters should be set out in order to obviate the need for those issues to be litigated again in some future proceeding.

3. I have heard the expert evidence and have read the medical reports furnished herein of the following;

- (a) Dr. Liam Power, General Practitioner to the respondent,
- (b) Professor Declan McLoughlin, Consultant Psychiatrist,
- (c) Dr. John Hilary, Medical Visitor on behalf of the President of the High Court,
- (d) Dr. Margo Wrigley, Consultant Psychiatrist.

I have also heard the evidence of:

- (a) The petitioner,
- (b) The respondent,
- (c) H.R., the sister of the petitioner.

I have also read their respective affidavits herein. I have also had the benefit of the oral submissions of counsel on behalf of the petitioner and the respondent.

4. I note the following;

- (a) The respondent is possessed of substantial property in a mix of real estate, bank accounts, post office investments, prize bonds and shares. She is also a beneficiary in the estate of her late husband.
- (b) The medical advisers, Dr. Liam Power, G.P., Professor McLoughlin and Dr. Hilary take the view that the respondent suffers from an acquired cognitive impairment compatible with a dementia syndrome most likely secondary to cerebrovascular disease. She has suffered documented change in personality, agitated behaviour and paranoid ideation likely to be related to this dementia. Since her settling into the Nursing Home, she has stabilised and improved and her cognitive impairment shows a slower progression than expected. Deficits persist however in short term memory, in arithmetic ability, frontal executive function, planning and impulse control. All three medical advisers conclude she does not have the cognitive capacity to deal independently with complex financial matters.

The respondent and her daughter do not agree with this assessment. They are supported by Dr. Margo Wrigley. Dr. Wrigley believes the respondent, having settled into her nursing home, is able to manage her affairs. She is, in her view, an old lady with a lot of problems as one would expect. She is not of unsound mind. Dr. Wrigley was instructed by the respondent's solicitors herein to examine and report upon the respondent for the purposes of this application and met her for this purpose on the 6th July, 2009 and 5th October, 2009.

5. I prefer the evidence of the three first mentioned medical advisers above for the following reasons:

- (1) Dr. Power has been the respondent's General Practitioner since 2003 and is thus better acquainted with her on a personal level than any of the other medical advisers.
- (2) Professor McLoughlin has been caring for the respondent since early 2008. He has carried out more sophisticated examinations of the respondent's cognitive ability than Dr. Wrigley. These involved particular attention to her capacities in planning, numeracy, short term memory and impulse control. These frontal lobe capacities, in his view, are essential to the capacity to manage one's affairs particularly in complex financial matters. He finds cognitive impairment indicating an incapacity to manage her affairs.
- (3) Dr. Hilary met the respondent and the chief nurse in the nursing home. Initially, he was not clear in his own mind about her initial presentation. He had a pleasant and friendly consultation with the respondent. Although unsure, he was very concerned for her wellbeing. He further consulted with Professor McLoughlin and came to the firm conclusion that he agreed with him that she did not have the capacity to manage her affairs.

6. There has been a history of some discord in the family. The petitioner was for a substantial time estranged from his parents and sister. The respondent's late husband, Mr. Michael Murphy managed to achieve a reconciliation. The events surrounding his death and this application seem unfortunately to have re-opened these difficulties. The respondent's paranoia problems clearly reported by her medical advisers were initially focused on her daughter. Now those paranoia problems are focused on her son, the petitioner. The relationship between the three is now characterised by suspicion, distrust and misunderstanding. This hearing, whilst obviously difficult for the parties, may have laid to rest some of the more glaring of these misunderstandings. In this regard, it is quite clear from the evidence and I find that the petitioner did not misappropriate savings or share certificates or title deeds. These were at all relevant times in the possession of Eugene F. Collins Solicitors. This was known by the late Mr. Michael Murphy but not by his wife, the respondent, or by his daughter. The respondent's jewellery was clearly returned to her by the petitioner at the earliest possible date following his receipt of her letter requesting the same. He received this letter the day after his return from Brussels. Misunderstandings concerning the petitioner's attitude to his father's will were also resolved. By letter dated the 11th September, 2009, John Costello, Solicitor, now of Beauchamp's Solicitors, on behalf of the petitioner herein indicated that the petitioner had no wish to challenge his father's will. The petitioner repeated this in evidence. The respondent's sister was not apparently aware of this and understood the opposite. Such misunderstanding and misapprehension, while typifying the difficult position in which the parties find themselves, is most unfortunate. It is to be hoped that following this hearing and the clarification of the above points, all the parties hereto will make every effort to restore harmonious relations. These later years of the respondent's life and the tranquillity of her children and grandchildren's lives cry out for reconciliation.

In the current climate of mistrust, any grant of the committee of the respondent's person would be likely to foster further division. The petitioner has indicated in evidence he does not wish to press the issue of his being appointed the committee of the respondent's person. He had already indicated he did not wish to be appointed the committee of her property.

7. The respondent is well settled and happy in the nursing home. She has a warm and friendly relationship with K.K. of "Home Instead" in respect of which she currently pays €2,000 per month. It is clear that this relationship plays a significant role in the respondent's wellbeing.

8. The test for determining what constitutes "a person of unsound mind" for the purposes of the 1871 Act has been very clearly set out by Kelly J. in *Francis Dolan v. The Registrar of Wards of Court* in an *ex tempore* judgment delivered on the 19th March, 2004 (at p. 17):

"The term 'person of unsound mind' is of course used but I think it must be understood that the term is used with a very definite legal meaning. It is a legal meaning which was alluded to in the U.K. in the case of Kirby v. Leather and in particular the judgment of Lord Denning, the Master of the Rolls, in that case. Kirby v. Leather is reported at 1965 Second Queen's Bench at 367. The particular passage from Lord Denning's judgment is as follows

'It seems to me that the words 'of unsound mind' in a statute must be construed in relation to the subject matter with which the statute is dealing. In Wysel v. Wysel Mr. Justice Phillimore held that the phrase 'unsound mind' in a statute relating to dissolution of marriage must be taken to describe a mental state which would justify dissolution of the marriage tie. That is mental incapacity such as to make it impossible for a couple to live a normal married life together. So here it seems to me in this statute a person is of unsound mind when he is by reason of mental illness incapable of managing his affairs in relation to the accident as a reasonable man would do. It is similar to the test where a guardian ad litem or a next friend is appointed under the relevant rules of court in England.'

So, it seems to me that the term "person of unsound mind" in the context of this particular case means no more than that Francis Junior is incapable of managing his affairs, a fact which appears to have been accepted by his parents to date."

This passage has been cited and accepted by the unanimous Supreme Court in the matter of *Wards of Court* and in the matter of *Francis Dolan* 2007 IESC 26 at p.16;

"The learned judge went on to explain that the expression "person of unsound mind" had a special meaning and not the perceived offensive meaning which was being attributed to it by the parents. It meant no more than that the appellant was incapable of managing his affairs."

9. In the context of this case it is clear the question is as to whether the respondent herein is by reason of some mental incapacity incapable of managing her affairs. The respondent herein was present in Court for the two days of the hearing. She gave evidence herself and was cross-examined. She acquitted herself splendidly and is clearly a person of vigour and fortitude. She is bright and assertive and is a lady who carries her years with great style and presence. Nonetheless it is clear from the medical evidence herein that the advance of age has deprived her of some of those mental capacities essential to the management of her complex affairs.

In the archaic and inappropriate language of the statute, I find, therefore, that she is a person of unsound mind and is incapable of managing her person and property.