

THE HIGH COURT

2015/10645 P

**IN THE MATTER OF AN APPLICATION FOR THE PLACEMENT OF D.W.W.
AND IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT**

BETWEEN

HEALTH SERVICE EXECUTIVE

PLAINTIFF

AND

D.W.W. (A PERSON OF UNSOUND MIND NOT SO FOUND REPRESENTED BY HIS NEXT FRIEND)

DEFENDANT

EX TEMPORE DECISION of Ms. Justice Bronagh O'Hanlon delivered on the 21st day of December, 2015

1. This Court has carefully read and considered the plenary summons issued on 18th December, 2015, the affidavits of Dr. Brendan McCormack sworn on the 18th December, 2015, the affidavit of Ger Kane, the affidavit of Shane Kenny with exhibits and the document by way of a report commentary on the progress of D. and the plan for future treatment/management from Dr. Seán ÓDomhnaill, Consultant Psychiatrist of the 9th December 2015 who runs Nua Healthcare and who is D.W.'s treating psychiatrist. Having considered the evidence before the Court in the form of comprehensive medical evidence of Dr. Brendan McCormack it is clear that this gentleman suffers from a formal diagnosis of schizophrenia as well as complex behavioural conditions and an intellectual disability.

2. Dr. Paul O'Connell was engaged in this case to give an independent voice on the issue of whether or not this patient lacks capacity. The patient himself is now in his late twenties having been born in 1987. The Court has also considered the evidence of Ger Kane who is the national co-ordinator for Hepatitis C in Stewarts Hospital, Dublin and who was involved at a time when this patient was moved to St. Andrew's Hospital, Northampton in March 2011. D. returned to Ireland from St. Andrew's in October 2014. There were issues around a number of criminal charges pending in this jurisdiction in 2011 and it was believed to be in his best interest that he would move to Northampton for treatment at that time. While remaining under the inherent jurisdiction of the High Court of Ireland, he then fell under the mental health legislation regime in England and his case was subject to tribunals and reviews. He was then stepped down to an open unit in Essex prior to his return to Ireland in October 2014.

3. The issue of capacity has been dealt with in two reports from Dr. Paul O'Connell, one in April, 2015 and the second in November, 2015. He has come to the conclusion, and it is described as a nuanced issue in this case, that this gentleman lacks capacity. The independent assessor, Dr. Paul O'Connell, was appointed to find out what the position actually was and is. A problem arose in this case in Nua Healthcare when there was an attempt to adjust the medication which was being given to this patient and this led to a deterioration in his mental health. Arising out of that, it appears from para. 7 in the affidavit grounding this application the Court has noted that the patient concerned suffers from a delusion that he is at risk of being poisoned, he also has a mild intellectual disability, cognitive impairment and impulsivity. It is now accepted by all concerned that a previous diagnosis of ADHD and Asperger's Syndrome are deemed by the medical professionals to be a redundant diagnosis. In the second report of Dr. O'Connell, this patient is described as having suicidal tendencies or ideations and homicidal ideations. He is described by Dr. Paul O'Connell as at significant risk of causing serious harm to himself and others. In April, 2015 he had severe volatility and lacked capacity with an ongoing acute psychosis and it was deemed essential that a period of rationalisation and stability would take place and then that there would be a review of the capacity issue. This has now been completed. Given that this Court is working on a case by case basis pending more full legislation to guide the Court in relation to the issue of capacity, this Court now accepts the plan which has been put in place for overseeing and governing the treatment of this young man.

4. It is accepted that joint clinical leads will include Dr. Crumlish as a HSE consultant who will be well acquainted with this case over the years jointly with Dr. Seán Ó Domhnaill, the treating psychiatrist for this patient in Nua Healthcare. An attempt will be made to rationalise the medication regime and treatment of this man over the coming months and that will be jointly agreed in advance by the two joint leads as set out in this decision. The governance structure overall for the HSE comes under Dr. McCormack Consultant Psychiatrist. Dr. Siobhán Ní Bhrian acted as clinical director and has been involved in this case in his absence or on his behalf and Dr. Crumlish will continue as the HSE representative.

5. Ms. McKittrick and Ms. Lagan have, to date, furnished D.'s wishes and concerns to this Court as his guardian and my understanding is that it is Ms. Maura Lagan who will continue now as his guardian *ad litem* which is deemed by this Court to be essential in this case which has considerable complexity.

6. Dr. O'Connell will continue to be called upon in his capacity as an independent reviewer when necessary.

7. The Court notes that Mr. Barrington B.L. who appears for the guardian has indicated that neither the *guardian ad litem* nor the HSE are in dispute in relation to the plan now being adopted in this case. Indeed Mr. Barrington points out to the Court that his instructing solicitor Mr. Pol Ó Murchu raised concerns that his client could not instruct him coherently and was concerned therefore as to his capacity. An issue has been raised that this gentleman is in a locked ward and that he stays there because he is told to stay and if told to remain there he will do so. This is an issue which the Court will look again at in late January. The Court notes however the cautionary note of Dr. Paul O'Connell when he says that the risk could become serious and fairly immediately. In the circumstances the Court has no difficulty therefore making the orders sought in the notice of motion.