

# **THE HIGH COURT**

## **WARDS OF COURT**

**[2024] IEHC 640**

**[WOC 0799]**

### **IN THE MATTER OF P.G., 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 the 31st day of October  
2024**

#### **Welcome**

1. To begin this ruling I want to extend a very warm welcome to Mr. G who joins us 'online' surrounded by family and accompanied by care staff.

#### **General solicitor**

2. I also want to thank Ms. Duffy, solicitor, from the General Solicitor's Office who moved the application.

#### **Leaving wardship**

3. Today there is no-one more important than Mr. G, because this is an application about him leaving wardship. During this ruling I will refer to Mr G. as the "respondent".

#### **2015 Act**

4. The application is brought under a particular piece of legislation, s.55 of the Assisted Decision Making Capacity Act of 2015 (the "2015 Act") and the respondent is the "relevant person" under that Act.

#### **The court's job**

5. This court's role is to consider the evidence before it and I will shortly summarise the evidence I have considered, which Ms. Duffy has put before the court today. Having considered that evidence, this court has to make one or more 'declarations' or findings about capacity i.e. ability to make decisions in certain areas.

#### **Three alternatives**

6. In other words this court must either declare that the respondent is someone who (i) does not lack capacity; or (ii) lacks capacity unless the assistance of a suitable person

as co-decision maker can be made available to them; or (iii) that they lack capacity even with such assistance. If that third scenario arises, the court should appoint a decision making representative or 'DMR'.

### **Areas of decision-making**

7. The court has to make one or more of those declarations depending on what the evidence supports and also has to make declarations in relation to specific areas of decision-making, i.e. regarding 'personal welfare' and 'property and affairs' as described in the 2015 Act.

### **Certain facts**

8. Turning to certain facts, the respondent is a single gentleman born in 1956 who is reported to have an intellectual disability. He was admitted to wardship in October 1993 and the General Solicitor is committee of his person and estate.

9. The respondent has been in full time residential care for some years with [X] disability service. With the support of HSE disability services, he recently moved to a certain residential care placement near family, where he receives regular visits.

### **Affidavit**

10. Today's application was brought by the committee on the basis of facts 'averred', i.e. sworn to be correct, by Ms. Linda Harney solicitor in what's called an 'affidavit', a sworn document dated 4<sup>th</sup> April, 2024.

11. I carefully considered this 'grounding' affidavit (on which the application is based) as well as the rest of the evidence, in advance of sitting today.

### **Manchester United**

12. Among other things, it is made clear that the respondent Mr. G is a Manchester United fan and I want to wish him the very best of luck under their new manager. I hope he got a chance to enjoy some of the 5 goals in what I understand was a 5:2 victory over Leicester City last night.

### **Correspondence**

13. The grounding affidavit makes clear that correspondence was sent to Mr. G about leaving wardship, including a 'reader friendly leaflet' and correspondence was also sent to the interim manager of his residential care placement.

### **Capacity**

14. Turning to the evidence regarding capacity, I have carefully considered a report prepared by Dr. K who is a consultant psychiatrist. Dr. K met with the respondent, Mr. G,

on the 18<sup>th</sup> October and while I've considered the entire of the report, it is sufficient to quote as follows from it today.

### **Diagnosis**

15. In terms of diagnosis, Dr. K states: *"Intellectual disability severe range. This is a permanent condition".* The symptoms are described as: *"significant cognitive impairment including difficulties with fluid use of language, severe difficulty recalling verbal information, impaired short and long-term memory and short attention span"* with a reference made to anxiety in certain circumstances.

### **Health, care and treatment**

16. Turning to decision-making in the area of *"health, including care and treatment"*, Dr. K's view is that the respondent: *"is able to engage in discussions related to simple basis healthcare decisions but is not capable of understanding complex information in this area or of retaining and using it to make decisions"*.

### **Welfare, including supports for ADL's**

17. Regarding decision-making in relation to *"welfare, including the supports required for ADL's"* (i.e. 'activities of daily living') Dr. K's view is that the respondent: *"is independent in performing most personal care activities. He understands the information needed to complete tasks in many areas and retains and uses it appropriately. He requires support in some areas and accepts that offered by the staff. His cognitive impairment limits his ability to be fully independent in this area and he requires the support of a suitable person"*.

### **Property and financial affairs**

18. As regards decision-making concerning "property and financial" matters, Dr. K's view is that the respondent: *"is not able to understand the information relevant to decisions relating to property and financial issues other than at a very basic level. His cognitive impairment affects his ability to retain information and to use it appropriately and because of the above he would be very vulnerable to exploitation and his difficulty with understanding language and expression also effect his ability substantially."*

### **Recommendations**

19. Dr. K makes the following recommendations in relation to discharge from wardship saying that the respondent: *"lacks capacity unless the assistance of a suitable person as a co-decision-maker is made available to him in making decisions in the areas of healthcare and welfare"* and she goes on to say that in property and financial issues the respondent: *"is someone who lacks capacity"*.

### **Unchallenged**

20. There has been no issue taken with this medical evidence. In other words there is no other medical evidence offered, nor was any sought despite the opportunity having been provided. Therefore this is uncontested, or unchallenged, medical evidence for the purposes of the decisions which this court has to make today.

### **S. 8 (7) & (8) of the 2015 Ac**

21. At para. 19 of the grounding affidavit Ms. Harney swears that it would be appropriate for a decision making representative or 'DMR' to make decisions concerning the respondent's property and finances, subject to the obligations set out in s. 8 subs. (7) and (8) of the 2015 Act.

### **Encourage and facilitate input**

22. Those sections are important. They require the DMR to encourage and to facilitate input from a relevant person insofar as possible and entitle the DMR to consider the views of those caring for or having a *bona fide* (i.e. good faith) interest in the welfare of such a person and that includes healthcare professionals.

### **Service**

23. I am very satisfied that all service requirements were dealt with appropriately. This is in circumstances where I have had the chance in advance of sitting today to carefully consider a range of affidavits of service sworn by Ms. Harney i.e. on the 19<sup>th</sup> April; the 23<sup>rd</sup> May; and the 23<sup>rd</sup> October of this year.

### **Mr. G's views and wishes**

24. They make clear that the application was served personally on the respondent and that every effort was made to ascertain his views on all relevant matters. Summarising things, what emerges from this evidence is that, with support from an advocate, the expressed wishes of the respondent, Mr. G, are that (i) he did not wish for a second opinion to be obtained as regards Dr. K's views; and (ii) he wished for his sister Ms. C to assist him. In other words, to be both his decision making representative in the area of financial and property decision-making *and* to be his co-decision maker in terms of personal welfare decisions.

### **Independent social worker**

25. It is also made clear by the applicant that the General Solicitor engaged the services of an independent social worker Mr. M, who met with the respondent and I have considered the contents of that reporting. It makes clear that the respondent is someone who is supported to live a good quality of life and has the benefit of family and professional care staff in that regard.

### **Assets**

26. At paras. 15 to 18, Ms. Harney makes averments (i.e. she swears facts to be true) in relation to the respondent's assets and a schedule of these is exhibited. In summary, they amount to (i) certain moneys in court; (ii) certain moneys in the committee account; and (iii) certain pension entitlements.

27. At para. 19 its averred i.e. sworn that there is no enduring power of attorney or advance healthcare directive known to exist.

### **Duties of a DMR**

28. It is also appropriate to say that, on the 29<sup>th</sup> October, the respondent's sister Ms. C confirmed in writing that she understands the duties of a decision making representative.

### **Declarations**

29. In light of the evidence which I have tried to summarise, it is appropriate that the court make the following declarations.

30. Having regard to s.55.(1) (b) (i) of the 2015 Act, to declare that the respondent lacks capacity in the areas of health and personal welfare decision-making unless the assistance of a suitable person as co-decision maker is made available to him.

31. Second, in light of s.55 subs. (1) (b) (ii) of the 2015 Act to declare that the respondent lacks capacity to make decisions regarding his property and financial affairs even if the assistance of a suitable co-decision-maker were to be made available to him.

### **Orders**

32. Flowing from those declarations, it is appropriate to make certain orders and I am very grateful to Ms. Duffy who has supplied a draft which seems to me to set out the appropriate orders in light of the evidence and the declarations. In summary, they are:

- to make a '**s. 27' order' [Civil Law (Miscellaneous Provisions) Act 2008]**, which concerns reporting restrictions and anonymises the respondent, Mr. G;
- to order that Mr. G be now discharged from wardship under **s.55 of the 2015 Act**; and
- to remit him to the management of his own affairs with the appointment of a suitable person as decision making representative in relation to property and affairs decisions and, temporarily in the manner I will explain, for personal welfare decisions;
- that decision making representative is the respondent's sister, Ms. C, and his choice to carry out that role;
- I am appointing her under **s.55 of the 2015 Act** as the respondent's DMR in the areas of property and financial affairs decisions;
- I am also appointing Ms. C as DMR for Mr. G as regards personal welfare decisions, but only until such time as a co-decision-making agreement is registered with the

Decision Support Service in relation to personal welfare decisions, having regard to **s.38 (8A) (b) of the 2015 Act**;

- in other words, the appointment of Ms. C as DMR for Mr. G in relation to personal welfare decisions will cease to have effect on whatever date the co-decision making agreement is registered, and that is consistent with **s.38 (8A) (b)**;
- the DMR is authorised to take custody, control and management of Mr. G's assets (i) held in a certain bank account which is referred to in today's application; and assets (ii) held by the accountant of the Court of Justice; and (iii) in the committee account of the General Solicitor;
- as provided for in **s.46(6) of the 2015 Act**, the DMR must account to the director of the Decision Support Service;
- the respondent, Mr. G, is to continue to receive his Department of Social Welfare Protection payment into the bank account referred to in the application;
- that arrangement is to be reviewed by the DMR on or before 12 months from the date of this court's orders;
- it is also appropriate to order that the accountant of the Courts of Justice carry out the directions in the payment schedule;
- in light of **s.42 (1) of the 2015 Act**, the DMR is not entitled to be reimbursed from the assets of Mr. G regarding her expense incurred in performing the role;
- given the medical evidence which I referred to, in particular, the permanent nature of the condition as explained by Dr. K, it is appropriate to order that Mr. G's capacity be reviewed by the Circuit Court no later than 3 years from the making of this court's order;
- the applicant, the General Solicitor, is authorised to provide a copy of the pleadings in the court booklet to the decision making representative;
- I understand from Ms. Duffy that no order for costs is sought and therefore none will be made;
- lest there be any issues arising in what is obviously a 'bespoke' order to meet specific circumstances, there will also be liberty to apply.

### **Congratulations**

33. Having explained the reasons for this court's decision and having dealt with the formal business, the final word must be to congratulate Mr. G who has now left wardship.

34. As a Man United follower, he has had to be very patient over the years waiting for a 'title' and he has been very patient indeed today. I want to thank him for that.

35. Although this application took some time, I hope it is clear that this court's approach and the approach of the General Solicitor's office has been to make sure that Mr. G's views were obtained and his wishes followed.

36. I also want to reassure him that his 'day to day' life will not change as a result of what has been decided today. He will continue to live where he remains happy and well-supported but he now leaves wardship with the supports he needs, going forward.

37. It was a pleasure seeing Mr. G today and I wish him the very best for the future.