

THE HIGH COURT

WARDS OF COURT

[WOC 2743]

**IN THE MATTER OF B.H., 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. The first important matter is to extend a formal but very warm welcome to Ms. H. Today is a very important day for her. This is a hearing about her leaving wardship and she participates 'online' today, listening in. I also want to welcome her brother, Mr. H, as well as her care staff. During this ruling I will refer to Ms. H as the "respondent".

General solicitor

2. I am very grateful to Ms. Duffy, a solicitor from the General Solicitor's office who 'moved' today's application. In other words, she took the court through the relevant evidence which I spent time carefully considering in advance of sitting and which I will try to summarise in this ruling.

2015 Act

3. Today's application is brought under the Assisted Decision Making Capacity Act, 2015 (the "2015 Act"), s.55 being the relevant section.

The court's job

4. The court's role today is to consider the evidence and then to make one or more declarations concerning certain areas of decision-making. There are alternatives available depending on what the evidence discloses.

Three alternatives

5. Those alternatives are to declare that someone (i) does not lack capacity; or (ii) that they lack capacity unless the assistance of a suitable person to act as co-decision-maker can be made available to them; or (iii) that they lack capacity even with the assistance of a co-decision-maker

and if that third situation emerges from the evidence the court should appoint a decision making representative (or "DMR").

Affidavits

6. The evidence before me is in written form, i.e. in the form of 'affidavits'. These are written documents containing facts which are sworn to be correct, as well as documentation attached to those affidavits.

Certain facts

7. Facts set out in the evidence include: the respondent is a lady born in the 1960s who is reported to have an intellectual disability. She was admitted to wardship in December 2003. The General Solicitor is committee of her person and estate and her brother Mr. H was subsequently joined as joint-committee of her person. The respondent has been living in long term residential care since 2002.

Grounding affidavit of Ms. Harney

8. Today, the committee brings the present application 'grounded' (i.e. based) on a sworn affidavit by Ms. Linda Harney solicitor of the 4th October, 2024.

Notice

9. Ms. Harney makes clear from paragraphs 6 to 10 of her affidavit that correspondence was sent to the respondent about leaving wardship and this included a "reader friendly leaflet" in that regard. Correspondence was also sent to her brother, the joint-committee of her person; as well as to the person in charge of the HSE Adult Residential Service where she resides.

Medical report

10. Turning to the medical evidence, Dr. O is a consultant psychiatrist and she met with the respondent on the 24th January and on the 9th February of this year. In advance of sitting today, I carefully considered the entirety of that report which is dated 9th February. In summary, Dr. O explains the reasons why she found the respondent to lack capacity on a functional assessment in relation to the areas of decision making covered by the 2015 Act.

11. It is sufficient for this ruling to quote from page 12 of Dr. O's report: *I am of the opinion that [Ms. H] lacks capacity relating to more complex decisions regarding her health, welfare and finances. I do not find that she is in a position to understand complex medical information, the value of money or the organisation of institutions. I do not find that she can problem solve, devise strategies, negotiate with others or effectively communicate in a manner that she can reason and communicate decisions in relation to her health, welfare and finances. I recognise that every effort can be made to assist her in optimising her ability by a decision making assistant or co-decision maker however it is my clinical opinion that her degree of intellectual disability moves complex information beyond her capabilities and capacity. It would be my recommendation that [Ms. H] receives the support of a decision making representative in relation to her health, welfare and*

finances and that her opinion is sought and her will and preference considered in all decisions taken on her behalf ."

Unchallenged

12. No issue has been taken with Dr. O's findings and opinion. In other words, no second opinion was furnished, or even requested. Therefore, this is 'uncontested' (i.e. unchallenged) medical evidence upon which the court has to make its decisions today.

DMR

13. At paragraph 29 of the grounding affidavit Ms. Harney solicitor 'avers' (i.e. she swears to be correct) that in the present case it would be appropriate for a decision making representative, or DMR, to make decisions regarding the respondent's personal welfare and property and affairs subject to the obligations found in s. 8 subs. (7) and (8) of the 2015 Act.

Encourage and facilitate input

14. These sections oblige the DMR to encourage and to facilitate input from the respondent 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 her welfare. This includes healthcare professionals and, therefore, the foregoing is of particular relevance on the facts of today's application.

Service

15. I am very satisfied that all service requirements were properly attended to. This is in circumstances where I have been able to consider, in advance, the contents of an affidavit of service sworn by Mr. M, solicitor, on the 17th October. It is clear from the facts he swears to be correct that the application was served personally on the respondent on the 16th October. Mr. M also makes clear that the effect and contents of the application papers were read out to the respondent and that the nature and implications of the application were explained to her in appropriate language with the assistance of staff nurse S.

Ms H's views

16. In relation to the choice of DMR and bearing in mind that the most important issue which underpins the 2015 Act is to hear the *voice* of someone in this respondent's position, Mr. M states the following in his affidavit: *"I informed [Ms. H] that her brother [Mr. H] was agreeable for his name to go forward as a decision making representative and she was happy and content to that. Nurse [S] explained to her what this means, and she nodded but had nothing to say."*

17. Later at para. 23, Mr. M avers (i.e. he swears the following to be true): *"Throughout the meeting [Ms. H] did not raise any objection to the application and the appointment of a decision making representative to assist her in making health, welfare, property and financial decisions. All matters and averments were explained to [Ms H] in detail by me and with the valuable assistance of staff nurse [S] who is an excellent and caring member of the staff..."* in the residential care centre which is named.

Thanks

18. At this point, I want to express my thanks to the staff who are providing such great care and support to the respondent.

Independent social worker

19. It is also made clear by Ms. Harney that the applicant engaged the services of independent social worker, Mr. B. He met with the respondent in her residence and his report states among other things:

"I was very heartened by what I saw in [the named residential care centre] today.

The place emanated warmth and kindness.

[Ms H] seemed to have a very good quality of life in general.

On first impressions the staff seemed very caring and committed to wanting the best for her and the other service users. They practice a person centred approach which shines through."

Again, this calls for an acknowledgement of the great care being provided which, of course, is no less than Ms. H deserves.

Assets

20. From para. 23 onwards Ms. Harney makes averments (i.e. sworn statements) in relation to the respondent's assets and a schedule of these is exhibited. In summary, these amount to (i) certain monies in credit union accounts as well as (ii) a weekly disability allowance and (iii) her interest in a certain property in a particular folio.

EPA

21. At para. 30, it is confirmed that there is no enduring power of attorney or advanced care directive known to exist.

Declaration

22. In light of this evidence, it is appropriate for the court to make the following declaration, namely, under s.55 (1) (b) (ii) of the 2015 Act to declare that the respondent, Ms. H, lacks capacity to make decisions regarding her personal welfare and property and affairs even if the assistance of a suitable person as co-decision maker were to be made available to her.

Orders

23. In terms of orders which flow from the evidence, Ms. Duffy has very helpfully provided a draft and I am satisfied that to make orders in those terms is appropriate and entirely supported by the evidence which I have considered. To summarise, those orders are:-

- a '**s.27 order**' [**Civil Law (Miscellaneous Provisions) Act 2008**], regarding appropriate reporting restrictions to anonymise Ms. H (and I made that order at the start of the hearing);

- to order the discharge of Ms. H from wardship under **s.55 (5) (b) of the 2015 Act** and to remit her to the management of her affairs with the appointment of a suitable person to act as decision making representative, or DMR;
- consistent with Ms. H's own wishes, I will appoint Mr. H, her brother, to act as DMR under **s.55 (5) (b)** in the areas of personal welfare and property and affairs decisions;
- it is appropriate to order that the DMR be authorised to take custody, control and management of the assets on behalf of Ms. H in the Credit Union accounts referred to in the application;
- the DMR is also authorised to receive payment of the Department of Social Protection Disability allowance on behalf of the respondent; and
- the DMR is authorised to take all necessary steps to protect the interest of Ms. H in her share in the property identified in the application, with reference to the relevant folio;
- in all the foregoing, the DMR must account to the director of the decision support service as required by **s.46 (6) of the 2015 Act**;
- in light of **s.42 (1) of the 2015 Act** the DMR is not entitled to be reimbursed from the assets of Ms. H in relation to expenses incurred in performing the functions of DMR;
- given the medical evidence, it is appropriate to order that Ms. H's capacity be reviewed by the Circuit Court no later than three years from the date of the making of this order;
- the applicant is also authorised to provide a copy of the pleadings, the court booklet, to Mr. H, the DMR;
- I note that no application is made for costs and no order for costs will be made.

Congratulations

24. That completes the formal business but I cannot conclude this hearing without expressing a sincere congratulations to Ms. H on leaving wardship.

25. I have already thanked all of those involved in providing such great care and support to Ms. H so that she can continue to live what is clearly a very fulfilled, happy, and busy life in her supported residence.

Wide-ranging interests

26. Like all of us, Ms. H has many aspects to her life and I was struck by the wide range of interests that she has, including: art, exercise, food (in particular spicy food) and a great love of music, in particular, country music especially artists like Daniel O'Donnell, Jimmy Buckley and Nathan Carty.

Three Amigos

27. I am very glad to hear that Ms. H was able to get to the "Three Amigos" concert in Mullingar which was referred to in the evidence, and I hope there will be many concerts in the future.

Conclusion

28. In conclusion, the point I wish to emphasise is that nothing decided today will prevent Ms. H from continuing to enjoy such a busy and interesting life. She will continue to have the support she currently has 'day to day' and, going forward, her brother will be an added support regarding decision-making.

29. It was a pleasure hearing from Ms. H today and I hope she continues to enjoy all her interests, country music in particular. I wish her all the very best for the future.