[APPROVED]

[REDACTED]

THE HIGH COURT

WARDS OF COURT

[2025] IEHC 717

[WOC 11581]

IN THE MATTER OF:-

SM [A WARD OF COURT]

***Ex Tempore* JUDGMENT of Mr Justice David Barniville, President of the High Court, delivered on 5th December 2025**

1. This is my judgment on an urgent application made by the Health Service Executive (the "HSE") in very difficult and sensitive circumstances. The application relates to a ward of court, Ms SM, in respect of whom the HSE are seeking orders to withdraw life-sustaining treatment and to cease active supportive care, in order to change Ms SM's treatment to palliative care. Understandably, it has been necessary for this application to be heard on a very urgent basis.

2. Ms SM is a 51-year-old lady with an established history of a mild intellectual disability and emotionally unstable personality disorder. She has been a ward of court since February 2023. I am very familiar with Ms SM, as are a number of my colleagues, as we have been

reviewing her case from time to time in the context of the orders which have been made in relation to her under the Court's wardship jurisdiction.

3. For the last number of years, Ms SM has been living in a residential placement outside Dublin, where all reports suggest that she had been doing very well. However, in early November of this year, Ms SM experienced respiratory problems that required her admission to St Vincent's University Hospital (the "Hospital") on 4 November 2025. She remained in the Hospital until 21 November 2025 when she was discharged back to her residential placement. Unfortunately, early in the morning of 25 November 2025 she had a cardiac arrest in her placement and was found unresponsive by the staff there. She received cardiopulmonary resuscitation (CPR) for approximately 53 minutes before being transferred by ambulance and admitted to the Hospital. Initial tests and scans disclosed pulmonary emboli (blood clots) in both her lungs which may have triggered her cardiac arrest. She has another cardiac arrest in the Hospital following her admission. Since her admission, she has been in the Intensive Care Unit (ICU) where, I am satisfied from the evidence before me, she has received excellent care from the staff.

4. The HSE's application has come before me some 10 days after Ms SM's cardiac arrest. I have been provided with evidence of a vast range of tests that have been carried out on Ms SM. All conceivable tests have been conducted. Tragically, all the tests have disclosed that Ms SM has suffered a devastating severe hypoxic brain injury as a result of her cardiac arrest. She is now deeply comatose and unresponsive off sedation. The tests (including an electroencephalogram) show that there is now no electrical or other activity in her brain. She has bilaterally absent somatosensory evoked potentials (no perception in either cerebral cortex of peripheral nerve stimulation) and a very abnormal CT (Computed Tomography) scan of her brain (diffuse swelling and early crowding of the brain stem). These findings are

all consistent with a severe hypoxic brain injury (due to lack of oxygen). The evidence is that this will be permanent. Ms SM will never recover or regain consciousness. The clinicians responsible for Ms SM's care in the Hospital have recommended that her care be switched from active supportive care to palliative care. Ms SM's family and her carers in the residential placement have been informed of this recommendation.

5. I have heard evidence from Dr Andrew Westbrook (who provided a number of reports and gave evidence remotely) and Dr Fiona Roberts (who provided a report and was ready to give evidence remotely but it was ultimately not necessary for her to be called). Both doctors are consultant intensivists at the Hospital. Dr Westbrook is the consultant who took over Ms SM's care on 1 December 2025. Dr Roberts was retained by Mr John Neville, who has been Ms SM's independent solicitor for a number of years, to provide a second opinion.

6. I am satisfied that all efforts have been made to provide active supportive care for Ms SM. However, the position now is that Dr Westbrook and his team are advising that she should be moved from active support to palliative care (and Dr Roberts agrees with that course). This is for a number of reasons including the risk of yet another cardiac arrest and of potentially serious infections in hospital. Sadly, Ms SM has no prospect of a positive outcome now, 10 days after the cardiac arrest. The evidence from Dr Westbrook is that she is not going to recover and will never regain consciousness. The strong advice from Dr Westbrook is that the Court should intervene at this point and direct that active supportive care would cease and that she would move to palliative care.

7. When considering the legal and ethical issues engaged here, it is relevant that the continued provision of the current interventions (she is on a ventilator, has had nasogastric feeding, cardiovascular and other supports) are all very active and invasive interventions. There is

certainly an ethical issue from the clinicians' perspective in continuing these active interventions where they have no prospect of achieving a positive outcome. Stemming from the ethical code under which the doctors are operating (the Guide to Professional Conduct and Ethics for Registered Medical practitioners (9th Edition, 2024) issued by the Medical Council (the "Guide")), there are issues from their perspective in continuing to provide those forms of very active and invasive intervention when they are not going to lead to any positive result or benefit for Ms SM and where they are, potentially, and actually, denying her a dignified death. Under paragraph 46.4 of the Guide, a doctor should not start or continue treatment, including resuscitation, or provide nutrition and hydration by medical intervention if the doctor considers the treatment is "*unlikely to work"*, "*might cause the patient more harm than benefit*" or is "*likely to cause the patient pain, discomfort or distress that will outweigh the benefits"* (Guide, page 64).

8. The HSE's application is, in my view, a very appropriate and proper application to be made in these very difficult circumstances. Unfortunately, the decision falls to me to make on the basis that Ms SM is a ward of court. However, the evidence all points one way. I have referred to Dr Westbrook's evidence. He provided the reports to the Court on a very urgent basis and gave oral evidence confirming his reports and his opinion that to continue active supportive care would be prolonging the inevitable, that Ms SM will never recover consciousness and will inevitably die. He requested the Court to permit a switch to palliative care on ethical and humanitarian grounds.

9. Dr Westbrook's evidence and opinion is corroborated and strongly supported by the evidence from Dr Roberts, who assessed Ms SM independently, and who completely agrees with Dr Westbrook's conclusions and the application being made by the HSE.

10. Mr John Neville, the independent solicitor, who is also the solicitor instructed by the ward's committee in wardship (who is the General Solicitor), has taken all steps that could, I think, be reasonably taken to test and challenge the evidence relied on for this application. He has made enquiries as to obtaining an independent report and that has now been provided by Dr Roberts. He has engaged with close members of Ms SM's family, in particular, her mother. Engagement has also taken place between the social workers, the HSE and Ms SM's mother. Ms SM's mother is aware of this application and is supportive of the care and is grateful to the Hospital for the care which Ms SM has received. She accepts that this is an application that has to be made by the HSE and she supports the application.

11. The ultimate legal test I have to apply in considering and determining this application is - what is in the best interests of Ms SM? I obviously have to consider the various constitutional rights that are engaged, including her constitutional right to life, in respect of which there is normally a presumption that all steps be taken to preserve life, her right to bodily integrity, her right to privacy, including self-determination, and her right to refuse medical care or treatment. None of these personal rights are diminished or extinguished by virtue of Ms SM's status as a ward of court. However, since she is a ward, the tasks falls to the Court to determine what is in Ms SM's best interests, within the constitutional parameters, and in light of the clear and undisputed medical evidence.

12. The leading case of *Re a Ward of Court (withholding medical treatment)(No. 2)* [1996] 2 IR 79 provides strong support for that approach (see also: *In the matter of C.F.*[2023] IEHC 321 (Barniville P)). The Court must take into account all of the rights involved here, including Ms SM's right to dignity in circumstances where the evidence is very clear that no interventions now will lead to a positive benefit or outcome for Ms SM. She would simply be left in a position where she would be having all these active and invasive

interventions with no positive benefit or result and which will only serve to prolong the inevitable, her death.

13. I have considered all the evidence as well as what has been said by Niall Nolan BL, counsel for the HSE, and by Paul Brady BL, counsel for Mr Neville, the independent solicitor. I am satisfied, and I have no doubt about this, that it is in Ms SM's best interests that I grant the orders sought by the HSE in the Notice of Motion.

14. I am very reassured by what Dr Westbrook says, that moving to palliative care will not lead to any diminution in the level of comfort and care provided to Ms SM by the staff in the Hospital. I am convinced, having heard from Dr Westbrook, that the staff will continue to be sensitive to Ms SM and her family and carers who are very keen to visit her. I am certainly very reassured by what Dr Westbrook has said in that respect.

15. I confirm that the orders that I make today are the orders set out in the Notice of Motion – which at the outset of the hearing I gave liberty to issue and I made it immediately returnable before me so that the substantive application could proceed this morning. Then, I made an order pursuant to section 27 of the Civil Law (Miscellaneous Provisions) Act 2008 that the publication or broadcast of any matter relating to the proceedings which would, or which would be likely to, identify the Respondent as a person with a medical condition be prohibited. Finally, I now make the substantive order sought by the HSE to allow the withdrawal of life sustaining treatment from Ms SM, the cessation of active supportive care and the switch to palliative care for her. I will make those orders and will make an order for Mr Neville's costs to be discharged by the HSE in the usual terms and will give liberty to apply in the event that there needs to be any further application.

16. I want to conclude by thanking Dr Westbrook and Dr Roberts for making themselves available to the Court at very short notice this morning. Additionally, I want to thank all of the staff in the Hospital who have cared for Ms SM so well over the past number of days. Finally, I wish to acknowledge the exceptional care and compassion shown by Ms SM's carers to both Ms SM and her family during these very difficult circumstances.

Postscript

17. Since delivering this judgment, I have been informed that Ms SM has passed away. I wish to express my sincere condolences to Ms SM's family, friends, carers and loved ones.