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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE OF AND PROTECTION

IN THE MATTER OF NS (No 2)

(ENDURING POWER OF ATTORNEY: INHERENT JURISDICTION)

KEEGAN J

Introduction

[1] This case relates to an appeal from Master Wells of a decision made on 8 September 2016 where the Master refused to register two Enduring Powers of Attorney (EPA). This judgment also relates to an application by a Health Trust for declaratory relief in relation to NS.

[2] I have previously given judgment in this case on 14 October 2016 reported as 2016 NI Fam 9. That judgment sets out the history of the case which I do not intend to repeat in this decision. NS is an elderly lady. The case relates to issues of her care. MS is the son of NS.

[3] Mr Michael Potter BL appeared on behalf of the Health Trust, Ms Martina Connolly appeared on behalf of the Official Solicitor and MS appeared as a personal litigant in this case.

[4] I have anonymised this ruling to protect the interests of NS and nothing should be published which would identify her or any of the adults involved in this case.

Background facts

[5] At paragraph [60] of my previous judgment I referred to the fact that a hearing would be required to assess placement options. I also made reference in that judgment to issues regarding suitability of placement which I wanted addressed.

Since that judgment NS has not had a settled life in that she has been regularly in hospital and she has also sustained an injury whilst in hospital. It also appears clear to me that her condition has deteriorated particularly her physical ailments emanating from chronic obstruction pulmonary disorder (COPD).

[6] The application is now for a declaratory order allowing NS to remain in residential care. It is clear from the application that NS may need to move to the specialist part of the nursing home due to her COPD for specialist nursing care.

[7] This judgment also deals with the EPA appeal which I heard in January and dismissed. I now recite my reasons which I gave ex tempore at that hearing. Before I turn to the substance of that decision and the decision I am making in relation to the declaratory application I intend to say something about case management.

Case management

[8] In my previous judgment I referred to the fact that MS appeared as a litigant in person. I encouraged MS to obtain legal representation and I adjourned the EPA appeal specifically for that to happen. Unfortunately MS continued to appear as a personal litigant. It appeared clear to me on some probing that MS has a difficulty with solicitors due to past experiences. At various points he said that he was instructing a human rights barrister but that never came to pass. I could not adjourn the proceedings indefinitely given the extensive period of time I allowed MS to obtain legal advice. In truth it seems to me that MS wishes to present this case himself and no amount of time would have changed that.

[9] This has had an impact on the conduct of court proceedings. The case became extremely difficult to manage due to the fact that MS did not comply with court rules. I did allow MS a considerable amount of leeway throughout the proceedings given his position and indeed given the subject matter of this hearing. However, the situation became intolerable in December 2016 at a case management hearing when I had to stop proceedings and warn MS that if he did not abide by court rules I would have to hear the case in his absence. This is an extreme measure which I did not want to take and ultimately did not have to take, but it is something that a court has to consider if proceedings become so unmanageable due to the conduct of one litigant.

[10] In broad terms, MS refused to accept that matters had already been dealt with in the court and wished to re-litigate matters I had already decided. This occurred on a frequent basis. MS also made various and multiple applications in court of unintelligible content, without notice, and without them being in the correct form. These ranged from issues of witness summonsing various people including officers of the court, solicitors and social work professionals. It also involved applying for evidence such as matters of phone recordings from a solicitor's phone and also recordings from a voluntary organisation who had dealt with his mother. MS on one occasion asked for 'a mistrial' to be ordered.

[11] The situation in this case was that case management directions hearings lasted up to two hours on some occasions and the hearings in the case lasted a considerable period of time. I had to intervene in terms of not allowing MS to ask repetitive or inappropriate questions. On 20 December 2016 I had to rise during the court hearing because of MS's conduct including him banging his fists on the desk where he sat and refusing to abide by court rules. In December 2016 MS also asked that I recuse myself from the case. I refused that application as I could not discern a valid basis for it.

[12] The issue of litigants in person has been dealt with in various decisions in this jurisdiction. Most recently Horner J in Smith and Hughes v David Black and Persons Unknown [2016] NI Ch 16 at Section C restates the principle that litigants in person must abide by court rules. He quotes from the case of Jones v Longley [2016] EWHC 1309 CL 56 paragraph [14] which states:

> "There are not in our system two sets of rules, one for those who employ lawyers, and one for those who do not. There is only one set of rules, which applies to everyone, legally represented or not."

[13] The courts cannot and do not modify the rules for those who are not legally represented. However it is correct that some leeway is given at the margins to take into account a litigant in person's position. In this case I consider that I gave MS considerable leeway. I was also sympathetic to him given the subject matter of this case. Indeed all counsel in the case have provided assistance to MS when called upon.

[14] The court process becomes unwieldy when a litigant does not accept that there is a process. The litigant should understand that matters are determined and decided and should not be re-litigated upon other than in an appellate court. Applications should be properly made. Witnesses should be properly questioned. The process of evidence cannot be prolonged to allow for the litigants to make speeches. The court arena is not a 'free for all.' I adopt the dicta of Lady Justice King in a recent case of Agarwala v Agarwala [2016] EWCA Civ. 1252 at paragraph [72] which reads as follows:

> "Whilst every judge is sympathetic to the challenges faced by litigants in person, justice simply cannot be done through a torrent of informal, unfocussed emails, often sent directly to the judge and not to the other parties. Neither the judge nor the court staff can, or should, be expected to field communications of this type. In my view judges must be entitled, as part of their general case management powers, to put in place, where they feel it to be appropriate, strict directions regulating communications with the court

> and litigants should understand that failure to comply with such directions will mean that communications that they choose to send, notwithstanding those directions, will be neither responded to nor acted upon."

[15] In this case MS has been critical of the Health Trust if they have not provided papers in advance to him. I faced difficulties in managing that issue because MS refused to sign a confidentiality letter in relation to obtaining documents. He has lost various documents and that situation has continued. I have also observed that when I have allowed time to MS to read documents he has not actually concentrated on the document at all. I consider that some of his interventions in relation to documents have been tactical. It is quite clear to me that MS has a comprehension of this case because he has effectively cross-examined out of documents that he has had in his own possession and as I have said previously he has made some valid points against the Health Trust in this case.

[16] A further illustration of the problem in the EPA appeal was MS's appeal. Notwithstanding that and the fact that he has been involved in the litigation process for some time he failed to file a proper appeal notice. He failed to file a bundle of documents. I had to manage the categories of documents that he relied on during the hearing by having them copied and presented to the other parties during the hearing. These largely comprised of letters either written by MS or sent by him to other bodies. The point is that the other parties did not have a chance in advance to see these letters or to comment upon the case made by MS. There cannot be one rule for a litigant in person and a different rule for other litigants.

The EPA appeal

[17] This appeal from the decision of Master Wells of 8 September 2016 related to two EPAs. The application was made by MS to register both of these. The first was a handwritten "power of eternity" document dated 17 April 2016. The second was an EPA in the prescribed form executed by both MS and NS on 23 June 2004. The signatures on that document having been witnessed by a solicitor. It was agreed at the hearing in December and again at two directions hearings in January that the EPA appeal should proceed and I heard that on 25 January 2017. I have conducted a rehearing given that this is an appeal from the Master.

[18] I have considered the decision of Master Wells which is comprised in her order. In summary, the Master refused to register the EPA of 17 April 2016 because it was not in the prescribed form. The Master points out that this does not comply with the rules and that it was a document written by MS and witnessed by a person over the telephone from the United States of America. The Master also refused to register the 2004 EPA. She accepted that that was a valid instrument. The Master had enquired into the viability of the registration and upon doing so issues were raised. As a result of this the Master exercised her discretion under the legislation

and refused to register the order. As part of the Master's enquiries a report was filed by the Official Solicitor.

[19] In determining this case I heard evidence from Mr Looka, social worker, in relation to management issues regarding NS's care. I also heard further evidence from Mr Pringle regarding an alleged conflict of interest that he said MS had in relation to NS's property. I considered all of the papers. I also considered the legislation governing this area which is the Enduring Power of Attorney (Northern Ireland) Order 1987. During the course of the hearing there was an application by Mr Potter that MS should give evidence and be subject to questioning however MS refused.

Conclusions on the EPA appeal

[20] Firstly I consider that there is a foundational difficulty with any application in that MS does not accept the incapacity of NS. It seems to me that that conflicts with the requirements upon an applicant in relation to registration of an EPA under Article 6(1) of the Order. Article 8 of the Order is also significant. It seems to me that the Master has appropriately exercised her powers under Article 8(4)(c) and decided under Article 8(5)(e) that MS is unsuitable to act as an attorney. I agree with that assessment for the following reasons:

(i) The fact of the matter is that MS had limited involvement with his mother up to the end of 2015/the start of 2016.

(ii) There is no proof of MS undertaking duties and obligations to his mother.

(iii) MS does not accept that his mother is incapable.

(iv) There is clearly a conflict of interest regarding NS's property. That is part and parcel of a chancery case which is ongoing and I accept Mr Pringle's evidence on this point.

(v) I accept the evidence of Mr Looka in relation to the management difficulties in NS's care which point to the fact that MS is not a suitable person to undertake the management of NS.

(vi) I add to Master Well's analysis my own view that MS is not a suitable person to look after his mother or to manage her affairs. I articulated my reasons for this in my judgment of October 2016 and for the avoidance of doubt they relate to MS's focus upon himself rather than his mother and his uncooperative nature. These factors have been demonstrated in court. Also, MS is unwilling to accept his mother's dementia diagnosis.

[21] It is important to note that Mr Pringle attended voluntarily in relation to this appeal. MS has complained that other witnesses were not brought to court. However MS issued summonses which were incorrect, out of time and which contained inappropriate information. In any event it appears clear to me that these witnesses were required by MS to allow him to ventilate his complaints against solicitors. In addition I did not consider that a trawl of Mr Pringle's phone records was necessary to enable me to determine the EPA appeal.

[22] I take into account the Official Solicitor's view. Having made enquiries the Official Solicitor noted that the daughter and son in law of NS objected to MS having the powers of attorney. For all of the above reasons I dismiss the appeal. MS asked for leave to appeal and I refused that in relation to the appeals.

Declaratory case

[23] The Health Trust applied for declaratory relief in relation to MS. I should say that I heard an interim application on 21 December 2016. The reason for that was that NS had been in hospital and was ready for discharge. On that occasion I heard a number of options put forward namely that NS stay in the rehabilitation unit, that she return to the care home, or that she return to MS's care. MS was insistent that I hear this application because he wanted his mother to return home with him over Christmas. I heard some evidence on that occasion and it became clear during the hearing that MS did not want his mother to remain in hospital. The Official Solicitor was clear that hospital was not the correct option for NS and that she should return to the care home. I was attracted to a view that the status quo should remain pending a full hearing in January however I was swayed by the representations of the Official Solicitor that the hospital was not an appropriate environment for this lady. I therefore did accede to the interim application having heard the evidence of Pam Boreland to have NS moved back to the care home in December 2016. I did this on the basis that all of the options would be looked at for the January hearing including the option of full-time care at home or respite care at home for NS. I listed the hearing for 25 January 2017.

[24] Prior to that hearing the Trust applied for an adjournment as they indicated that they would not have their documentation ready. MS opposed this and I had various directions hearings to deal with the matter. I decided on balance to proceed with the hearing. I should say that I consider that a prolonged litigation process has not assisted MS and it seemed to me that the parties should be required to bring the best evidence to court for a hearing in January to conclude this matter. I therefore heard the declaratory application on 25 January 2017 and 1 February 2017 and what follows is a summary of the evidence and my ruling in that case.

[25] Firstly, I heard from Dr McPherson. Dr McPherson confirmed her view that NS currently lacks capacity to deal with the question of her residence. Dr McPherson stated that she had assessed the care needs of NS and she considered that NS needs specialist 24 hour care. Dr McPherson pointed to the fact that the prognosis for NS is not good, that this is a condition without cure which will not

improve. Helpfully Dr McPherson stated that she had seen NS recently and that her physical problems are becoming more pertinent. When she was discharged from hospital after her chest infection she was unsettled and not feeling her best. Dr McPherson stated that this would be a recurrent theme and that NS may require oxygen therapy in the future. MS cross-examined Dr McPherson and made some criticisms of her evidence. In particular, he referred to his mother having a swollen leg which Dr McPherson could not confirm or indeed comment upon. MS effectively went over his previous cross-examination of Dr McPherson in making his case that he wanted his mother to come home. He also referred to his mother having depression, his mother drinking heavily in the past and his belief that she was not being cared for properly in the care home.

[26] I also heard evidence from Mary Murdock a specialist dementia nurse. Ms Murdock gave impressive evidence about her involvement with NS since the end of November 2016. She said that there had been a referral from the hospital and that she was involved to support the transition to the care home. Ms Murdock said that she worked as part of a multi-disciplinary team with occupational therapy and psychology. Ms Murdock gave evidence about the type of assessment undertaken in terms of presentation and care needs. Ms Murdock said that this was not quite complete but would be in the very near future. She said that the current findings in relation to NS were that she was confused and disorientated. She had no clear notion as to time, place or the houses she had lived in. On occasion she talked about looking after her mother and father, going to Mass and going to school. Ms Murdock said that at night she would be very confused. Ms Murdock said that on occasions she would forget to use her rollator. Ms Murdock said that NS needed help toileting and that she had urinated on the bed on occasions. Ms Murdock said that NS talked to objects in the room.

[27] The overall view of Ms Murdock was that NS was disorientated. She said that a full cognitive impact report would be provided from Dr Victory. Ms Murdock was clear that NS needed 24 hours specialist care in a secure environment. Reference was made to management of physical conditions such as COPD and that special nurse care was available in the care home in relation to that. The other major concern was NS's sleep pattern which Ms Murdock said was very poor. Ms Murdock also referred to the fact that in the care home there was a sensor mat on the bed which flags patient movements to staff. Ms Murdock said that NS does participate fully in an activity programme and she does get stimulation in the unit from other patients and from staff. Ms Murdock said that there was no diagnosis of gout, that NS's legs had become somewhat swollen but the general practitioner thought this was oedema and recommended rest. Ms Murdock was clear that personally and professionally NS needed to stay in the residential home. She said that a 24 hour care package at home would not work due to the need for specialist staff and facilities. Ms Murdock also confirmed that NS may have to move to the EMI Nursing Unit which is part of the care home due to the specialist staff there and to manage the COPD. She said that NS would have her own room and en-suite facilities there and that she was familiar with the staff because she had visited that

floor of the home. Ms Murdock confirmed that she does have regular contact with NS.

[28] During his cross-examination, MS suggested that a move to the specialist nursing unit would not be helpful because the patients there are more acutely ill. Ms Murdock did not accept this and she stated that NS did attend upstairs on occasions and also that she may need this type of nursing care. MS repeatedly put his point to Ms Murdock that his mother wants to go home.

[29] I then heard from Ms Sinead Toal who is an occupational therapist. Ms Toal adopted a report that she had prepared for the court. In this report Ms Toal examines the options for care in the care home and care at two properties which NS has an interest in. This witness was quite clear that from an occupational therapy point of view neither home was suitable for NS. She said that in taking an overall view of the needs of NS that she needed the specialist care provided in the home. The one appropriate question that MS asked was in relation to safety. He made the point that NS had never fallen and sustained a fracture in her own home notwithstanding the stairs but yet she sustained a fracture in the care home and an injury in the hospital. I do consider it is appropriate to raise this issue and the witness did accept that but she made a point about the fact that NS has no insight as to risk and she does not know that she needs help and she has memory difficulties. Ms Toal also referred to the fact that specialist staff can respond in the care home setting and she referred to an overall assessment of personal care needs, food, medication, hygiene being extremely important. As such this witness thought that the risks were higher in the home environment.

[30] At the end of this evidence, when I was rising for the day, MS made an application to the court which was to the effect that he alleged that his mother had been now held unlawfully in Trust care for 216 days. He said that this was 'forced against her will.' He asked that the Trust pay £5,814,000.00 immediately. I rejected this application which has been made before.

[31] I resumed the hearing on 1 February 2017. I then heard evidence from Pam Borland the social worker with responsibility for this case. Ms Borland started by telling me that NS had a further hospital admission over the preceding weekend but that she had been discharged yesterday. Ms Borland said this admission was to track oxygen levels and that it was a monitoring arrangement. Ms Borland was quite clear in her evidence that NS should reside in the care home and that she may need more specialist nursing care. Ms Borland referred to the fact that since October 2016 there had been three unannounced RQIA visits at the residential home and that an inspector had been present on site reviewing the incident reports including NS's fall. Ms Borland confirmed that no issues were raised regarding the care home in the RQIA reports. During cross examination MS reiterated the points he had made before about wanting his mother home.

[32] I also heard evidence from Dr Barbara English. Dr English is the lead specialist with the dementia outreach team. She is a consultant psychiatrist with a

speciality in old age. Dr English referred to the fact that prior to her current involvement with NS she had filed an independent opinion for the Official Solicitor in June 2016. She stated that she had filed a subsequent report with the Official Solicitor in relation to NS's capacity to litigate in chancery proceedings dated 21 January 2017. Dr English gave evidence about her role to provide a co-ordinated medical overview of NS's dementia specialist care. She referred to the cognitive report from Dr Victory that was now available and the reports from Mary Murdock and Sinead Toal that I have already referred to.

[33] Dr English gave impressive evidence in relation to her assessment of capacity. In simple terms Dr English explained that the first step is that the patient must have an accurate recall of where she did live in terms of the detail of it, the environment and the supports needed. Then the patient must be able to talk about her current situation and needs, retain that information and be able to weigh that information in terms of the benefits of her current residence against where she used to live. The patient must also have an awareness of the risks involved in both places of residence. The patient must be able to weigh up the options to evaluate where she should live. Dr English was quite clear that in her evaluation of NS this test was not met.

[34] Dr English also referred to the various options which had become part of the decision-making. Firstly in relation to the Cliftonville property she referred to the risks of fire, fall and access. Most pertinently Dr English referred to the fact that NS has no clear recollection of residing there. She has no attachment to that property so the assessed risks outweigh the benefits. In relation to the Highbury property Dr English said there were the same issues about fire, fall and access. Again Dr English said that there was no recall on the part of NS about living there and so the assessed risks outweigh the benefits. As regards the care home which is an Elderly Mental Infirm (EMI) Unit the doctor referred to the fact that the environment is safer for NS given the nature of it. In relation to respite Dr English said that there was no benefit to this. She said that there was no attachment to either of the homes that so even a brief visit would not benefit NS. Dr English also referred to another important factor which is that over the past month there have been concerns about frequent chest problems associated with NS's condition. This is subject to monitoring to look at whether oxygen is needed. She referred to the fact that the care home has access 24 hours a day to support NS. She also referred to the fact that the care home is within the local area so there is familiarity and accessibility for visitors.

[35] I was struck by the evidence Dr English gave in relation to the issue of NS's home which she said was a concept rather than a place and in particular that patients like NS often refer to going home even when living at home. The doctor was clear that NS has no clear consistent answer about where home is, but she was not surprised by that given her chronic condition. Dr English was quite clear in relation to safety issues which pointed towards NS needing to live in the care home. She said that this was the safest place and that NS can access indoor and outside

spaces within the residential home. Dr English was clear that this is a case where NS lacks capacity and given her chronic progressive position she is unlikely to regain capacity. Dr English said that this was not a borderline case. In her evidence Dr English also clearly said that the residential home was the best option having considered all of the options with the multi-disciplinary team.

[36] MS cross-examined Dr English about the fact that she was employed by the applicant Health Trust. Dr English explained her obligations as a medical doctor to present an opinion to the court that she could stand over. She said that there was no duress put upon her by the Health Trust on this or any other case to give an opinion favourable to the Trust. She said that she prepared her report of June 2016, her report in January 2017 and her assessment of NS with the special outreach team on the basis of her medical experience. Dr English also referred to her letter of 12 January 2017 under questioning from MS. She confirmed that the opinion that she had highlighted in that letter about more time being needed for the case was not a current position given the report from Dr Victory and the work that had been done since then. In other words she was content that the case did not need further assessment. An important part of the evidence of Dr English was that she considered that the assessment was not masked in any way by an issue of delirium. That had been her clinical concern and she said that Dr Victory's report confirmed that the cognitive issues had not changed since the assessment of August 2016. So she said there was not a significant element of delirium which would mask the assessment and no more time was needed to put forward a clinical view to the court. In relation to her assessment on 21 January 2017 the doctor stated that she did not see any particular issues with infection. She referred to discharge information from the hospital admission of 29 January to 31 January 2017 which showed no acute infection and the CRP was low.

Submissions of the parties

[37] Mr Potter applied for a declaratory order and he made the point that there was comprehensive evidence before the court upon which the court could be confident that such an order was merited. Mr Potter stressed that unfortunately NS is not getting better and it is important that she has suitable care.

[38] Ms Connolly, on behalf of the Official Solicitor, supported the application. She said that there was clear and unequivocal evidence of a lack of capacity. She referred to the wider test of best interests in deciding the best place for NS to live. Ms Connolly said that this involved looking at physical care, emotional well-being and quality of life. Ms Connolly said that specialised care was needed in the view of the Official Solicitor. Ms Connolly also made the point that the most appropriate order in this case would be to make an order until further order with an annual review. She argued that this would provide security and reassurance for NS and that it would be a better route in terms of certainty regarding her property. Ms Connolly stated that this would be Convention compliant on the basis that safeguards were built in. Ms Connolly stated that as this case concerned a person with a chronic progressive condition that I should make such an order. Ms

Connolly referred to the type of safeguards which could be provided such as an annual review which would involve the Official Solicitor. She also said that the court could direct annual reports from the Health Trust and the Official Solicitor.

[39] MS objected to the declaratory order and he stated that due to infections which were on-going his mother would clearly deteriorate and that this would be a slow death for her. MS reiterated that he wanted his mother to come home to him and that he could look after her with the help of carers. MS referred to the fact that his mother had done a lot in her life and he asked the court to conclude that she should come home. MS suggested that one mistake that a solicitor made with the Enduring Power of Attorney had effectively decided this case. MS also referred to further mistakes that he said were made by solicitors in relation to an issue with Helm Housing. MS referred to the fact that he thought that this application would breach the Article 8 rights of his mother and also that the Trust was liable for a large bill of over £5m which should be paid to him. MS also asked that I visit his mother as he thought that would help me in my decision-making.

Conclusions on the declaratory case

[40] I begin by reflecting on the fact that NS is vulnerable 83 year old lady. She has had considerable upset over the last number of years. I accept that she was a vibrant woman who lived independently and contributed to the community. I also accept as a basic principle that it would be best if NS could live out her latter years at home. I accept that there is an emotional issue at the heart of this case and MS has certainly drawn on that at various times. I do not criticise him for this because this issue affects many families and it is not easy and I can understand how rational judgment can be clouded by emotion at times. However, I must make a decision on the basis of the facts before me and on the basis of the evidence including the specialist medical evidence. I have considered carefully whether I should visit NS in the care home. However I cannot really see that there is any purpose to that. It would not assist me in my decision-making given the fact that NS has a chronic progressive condition and given the symptomology that she is displaying. I totally accept the points that MS makes that at times she has indicated that she wants to come home but equally I accept the force of Dr English's argument that home is a concept and not a place and that NS has not been consistent about where home is.

[41] I consider that NS has been fully and properly represented in these proceedings by the Official Solicitor. I have also heard considerable oral evidence and submissions before reaching my decision.

[42] I have already made findings in relation to capacity in my previous judgment. For the purposes of this declaratory order I have heard further psychiatric evidence and I am satisfied that NS does not have the capacity to make a decision about her residence. This is not likely to change. I was impressed by Dr English's analysis of this issue. Dr English pointed to the fact that four psychiatrists have looked at this issue over the last six months and they have reached the same

conclusion. I should say that I also consider that Dr English has applied a totally professional eye to this case.

[43] The main issue in this case is then to look at the best interests of NS. I have placed some considerable burden on the Trust during the course of the hearings. I have had to look at all available options. In particular when I gave judgment in December I asked the Trust to look at the various options in the community. I had also been concerned about the fall sustained in residential care and I wanted to make sure that it was an appropriate environment for NS. The Trust has dealt with both issues thoroughly. I have now heard evidence about the various properties in the community and how they compare to the care home option. I have heard evidence from Ms Toal and Ms Murdock about practicalities and I accept that MS does not accept that there are any practical difficulties with the various properties. However, even if he were right in relation to that the issue of best placement involves a much wider consideration. I have heard about inspections at the residential home and as such I am satisfied that the necessary checks have been made.

[44] I do not accept MS's arguments about his ability to care for his mother. MS made many speeches about how he had looked after his father. Even if I overlook the lack of proof about this I have already said that this does not equate to MS being able to look after NS. On the very last day of hearing MS also asked that his home be assessed. When challenged about the evidence against him all MS could say was that the witnesses had lied. Indeed I pointed out to MS that he had said that every single witness in the case had lied in one respect or another. This demonstrates his total lack of insight into the issues.

[45] All of the Trust witnesses gave evocative evidence about the need for safety, consistency of care, 24 hour care and as such I am entirely satisfied that the Trust has considered all of the options and presented the correct option for NS. It is clear on the evidence that I have heard that NS's condition has in fact deteriorated since the case has started. Her physical needs have got greater. She may require oxygen in the future. She may therefore require specialist nursing care. It is entirely unrealistic to think that given her needs NS could be looked after in the community. MS has not accepted my previous findings whereby I stated that I did not think he was an appropriate carer for his mother and that was not likely to change. That remains my view for all the reasons I gave in my previous judgment and nothing I have heard in this case has changed that.

[46] I take into account the legal tests in relation to this application which I have set out before. In particular, I consider that an order is proportionate under Article 8 of the European Convention on Human Rights (ECHR) and I have taken into account the requirements of Article 5 of the Convention before making a decision as the proposed placement involves a deprivation of liberty.

[47] I have considered carefully what the correct order would be to make in this case. I must state that I consider that the litigation process has not been helpful for

anyone in this case, not least MS. I therefore consider that as the issues are tolerably clear and as I have gathered a considerable body of expert evidence that it is proper to make an order in this case until further order. Ms Connolly's submissions were convincing on this issue. However I have to ensure that any order is Convention compliant. I say this in the context where the mental capacity legislation is not yet in force in Northern Ireland. There are no statutory deprivation of liberty safeguards in place. However, I intend to ensure that safeguards are put in place for NS. I therefore consider that there should be an annual review and that prior to that review by the court a report must be filed six weeks in advance by the responsible Trust and four weeks in advance by the Official Solicitor. Those reports will come to the court and the court will then determine the form of any hearing in the future. Those reports should also be shared with MS and any other persons who retain a valid interest in the care of NS. I accede to the making of the order in draft as lodged by the Trust with the amendment suggested by Ms Connolly to insert the word regulate.

[48] Finally I repeat my conclusion that I hope that NS can achieve some settlement in her placement and that all parties will work towards that. I am grateful to the Official Solicitor for the care and attention that she has applied to this case. I am grateful to the social workers and the medical professionals who have been patient and who have reacted to the impositions upon them directed by the court and also by MS. A final word goes to MS. I understand that he will be disappointed by this judgment however I have made my ruling having considered this case over some long time and with NS's best interests at the forefront of my mind.

Overall conclusion

[49] Accordingly, I dismiss the EPA appeal brought by MS and I refuse leave to appeal. I grant the application for declaratory relief bought by the Health Trust and I make the order until further order on the basis of the safeguards I have identified.