[APPROVED]

[REDACTED]

THE HIGH COURT
WARDS OF COURT

[2026] IEHC 477

WOC 11917

IN THE MATTER OF AN INTENDED APPLICATION FOR MINOR WARDSHIP

IN THE MATTER OF TN [A MINOR]

BETWEEN:

CHILD AND FAMILY AGENCY

Applicant

-and-

MN and BN

Respondents

-and-

HEALTH SERVICE EXECUTIVE

Notice Party

JUDGMENT of Mr Justice David Barniville, President of the High Court, delivered on the 16th of July 2026

1. Introduction

1. This is my judgment on an application made by the Child and Family Agency (the "CFA") in very difficult and sensitive circumstances. This judgment is a record of the *ex tempore* judgment I delivered in court on 19 June 2026. However, for greater clarity and to give context to my decision, I will describe the procedural history and medical evidence in a little more detail in this written judgment than I did at that time.
2. The CFA's application under the minor wardship jurisdiction of the High Court relates to a 17-year-old girl (who turns 18 in September) (hereafter "TN"), who has made the decision to decline chemotherapy and other medical and hospital treatment in circumstances where she has been diagnosed with Stage IV vaginal cancer. Understandably, it has been necessary for this application to be heard otherwise than in public, under s. 45 of the Courts (Supplemental Provisions) Act 1961 (the "1961 Act") and, in that respect, any information that may identify TN or her family has been redacted or removed from this judgment.

2. Procedural Background

(i) The *Ex Parte* Application

3. These proceedings were commenced by the CFA by way of an *ex parte* application to the High Court on 1 May 2026. The application sought various reliefs, principally an order directing that the minor, TN, not be removed from the jurisdiction without leave of the Court pending the outcome of the proceedings or further order of the Court. The *ex parte* docket also sought ancillary orders including a direction that the minor's passport or passports be surrendered to the CFA pending further order and an order permitting the CFA

to share any order with An Garda Síochána, relevant travel and passport authorities, and other appropriate agencies of the existence of the orders sought for the purpose of enforcing the prohibition on the minor leaving the jurisdiction. Additionally, the CFA sought the s. 45 order directing that the proceedings be heard otherwise than in public.

4. The application was grounded on the affidavit of Mr Hugh McDonagh, a social worker with the CFA, who outlined concerns regarding the medical welfare of TN, who had been diagnosed with Stage IV vaginal clear cell carcinoma, and her disengagement from recommended medical treatment and follow-up care. The CFA contended that the minor's condition gave rise to urgent welfare considerations. The Notice of Motion prepared by the CFA sought a range of substantive and interlocutory reliefs concerning the minor's medical assessment, capacity assessment, admission to hospital, if necessary, and the provision of such medical treatment and care as might be considered to be in her best interests.

5. The affidavit of Mr McDonagh also outlined concerns regarding the possible removal of the minor from the jurisdiction. In that regard, the Court was informed that, in May 2025, following notification of intended District Court proceedings, but before the application for a Supervision Order was heard, the minor had travelled with her father to his country of origin, where she remained for a number of months. Mr McDonagh averred that, while abroad, the CFA experienced significant difficulty maintaining contact with the minor and obtaining information regarding her care. Against that background, he expressed concern that, if notified in advance of the minor wardship application, the parents might seek to remove the minor from the jurisdiction. It was on that basis that the CFA sought the orders restraining the removal of the minor from the State, requiring the surrender of her passport and permitting notification of relevant travel and law-enforcement authorities.

6. Given the CFA's concerns, on 1 May 2026, I granted the reliefs sought in the ex parte docket and appointed Ms Seona Ní Mhurchú, solicitor, as Guardian ad Litem for the minor (the "GAL"). Additionally, I granted liberty to the CFA to serve a Minor Summons and Notice of Motion, to notify the parents of the making of the order by telephone and text message, and to effect service of the relevant court documentation. The proceedings were then adjourned to 5 May 2026, with costs reserved and liberty to apply.
7. I should observe here that TN and her parents complied with these orders and participated very constructively in the proceedings in what were no doubt very difficult and distressing circumstances.

(ii) *Inter partes* hearings

8. When the matter returned before me on 5 May 2026, Counsel appeared on behalf of each of the following: the CFA, the Health Service Executive (the "HSE"), the parents of the minor and the GAL. The GAL, Ms Ní Mhurchú, attended the hearing, as did the allocated social worker from the CFA. On the consent of all the parties, I continued the protective measures previously put in place, including the order preventing the removal of the minor from the jurisdiction and the requirement that the minor's passport remain surrendered. I further directed that communications and notifications to the parents were thereafter to be made through their solicitors and adjourned the proceedings, including the Minor Summons and Notice of Motion, to 7 May 2026 to facilitate a meeting between the minor and the GAL.
9. The GAL met with the minor on 6 May 2026 at the offices of the solicitors acting for the parents. Thereafter, the GAL swore an affidavit on 7 May 2026 setting out the substance of that meeting, and the views expressed by the minor. In her affidavit, the GAL described

the minor as *"a very impressive person who was able to articulate her thoughts and views in a clear manner".* The GAL reported that the minor was adamant that she was not willing to undergo a medical assessment, stating that she "*had been through enough, that she had undergone multiple scans and blood tests, that her body had been 'tested and prodded'"* and that she felt nobody was listening to her. However, she did indicate that she was willing to undergo a capacity assessment. The GAL further reported that the minor demonstrated a detailed understanding of her diagnosis, her previous treatment history, and the medical options that had been discussed with her. Overall, the GAL expressed the view that a capacity assessment should be carried out before consideration should be given to any further application for orders compelling or facilitating broader medical assessment or intervention.

10. Prior to the hearing on the 7 May 2026, the Court was also furnished with an affidavit sworn by the minor's father, Mr N, on 6 May 2026. In that affidavit, Mr N set out the concerns held by the family in relation to the medical treatment proposed by the HSE and the medical professionals involved in the minor's care. He averred that the family believed that the minor's condition had improved significantly since she had commenced an alternative herbal treatment and explained that she was not experiencing the symptoms anticipated by her treating clinicians. He further expressed concerns regarding conventional cancer treatments, including chemotherapy and radiotherapy, and contended that both he and the minor were entitled to question and decline medical recommendations with which they did not agree. Mr N disputed suggestions that the minor's views were the product of parental influence and maintained that she had reached her views independently. He averred that the minor was feeling well, disputed the suggestion that she lacked

independence in forming her views regarding treatment, and explained that the family's decision to pursue alternative treatments rather than conventional medical interventions was informed by their own beliefs and experiences.

11. Mr N emphasised throughout his affidavit that the family's position was not one of opposition to the court process itself, averring that *"at all times my overriding intention has been that* [TN]*'s wishes would be respected in the context of the treatment that she is to be given"*. He further confirmed that *"neither myself, nor my wife, have any objections to such capacity assessment"* and maintained that *"*[TN] *is making her own choices in this matter* [and] *that my wife and I are supporting her in those choices."* Mr N also rejected the CFA's concerns regarding removal from the jurisdiction, stating: *"I do not accept the averment that there is a risk that your deponent and my wife will deliberately remove* [TN] *from the jurisdiction."*

12. More generally, he opposed the substantive reliefs being sought, averring:

> *"22. I say that neither I, nor my wife, are agreeable to the Orders being sought. We do not believe that* [TN] *should be compelled to attend for treatment which she does not wish to undertake. It is our view that she should be permitted to make her own decisions around her medical treatment. We have supported her in those decisions and will continue to do so.*
>
> *23. It is our belief that a capacity assessment will affirm that* [TN] *does have capacity to make decisions related to her treatment, and that that assessment should take place to allow this Honourable Court to have that information to hand, before making any decision around the remaining Orders which the Applicant and/or Notice Party are seeking."*

13. The proceedings subsequently returned before the Court on 7 May 2026 and again on 14 May 2026. During the course of those hearings, the issue of the minor's decision-making capacity was agreed to be the central question in the proceedings and the matter was adjourned to facilitate arrangements for an independent assessment of the minor's capacity to make decisions concerning her diagnosis, prognosis, treatment options and palliative care.

14. Following the hearing of 14 May 2026, the HSE arranged for an independent psychiatric capacity assessment to be conducted by Dr Karen Humphries, Consultant Psychiatrist. Dr Humphries met with and assessed the minor on 18 May 2026. Her report was subsequently exhibited in an affidavit sworn by Ms Ciara Redmond, a solicitor acting on behalf of the HSE, on 21 May 2026.

15. In her report, Dr Humphries concluded that the minor possessed a detailed understanding of her diagnosis of Stage IV vaginal clear cell carcinoma, her prognosis, the treatment options available to her and the likely consequences of accepting or declining such treatment. Dr Humphries further concluded that the minor was capable of understanding, retaining, using and weighing relevant information and communicating her decisions, and opined that she had capacity to make decisions concerning her healthcare and treatment.

16. In reaching that conclusion, Dr Humphries recorded in considerable detail her interview with the minor. Dr Humphries noted that *"*[TN] *was able to explain that stage IV meant that the cancer had spread to other organs"* and recorded that *"*[TN] *is aware, understands, accepts and believes that she does have vaginal cancer"*. The report further recorded the minor's account of the circumstances of her diagnosis, namely that:

> *"*[TN] *recalled that her diagnosis had been made due to scans that 'my parents pushed for'. She described that she had been experiencing severe and prolonged bleeding and cramps when she menstruated so had gone to her GP. She stated that her GP had said 'it's normal'. Unfortunately her symptoms had persisted so she had been taken back to her GP by her mother and on request a scan had been organised".*

17. Dr Humphries was satisfied that TN understood the conventional treatment options that had been proposed to her. The report records that *"*[TN] *was able to explain that chemotherapy would not have been curative"* and that she *"had hoped for surgery, and if this had been offered she would have accepted that option"*. Dr Humphries also considered the minor's understanding of her prognosis and future care needs. The report notes that when asked whether she would undergo further scans, *"she stated that she had 7 scans in 2025 and does not want further scans. She 'wants to get* (sic) *my body a break'. She did say that if she had a year or two free of scans, she would consider another one."*

18. Dr Humphries further reported that:

> *"*[a]*t the present time* [TN] *is taking an alternative option to manage, or treat, her cancer. She is using a herbal option, which comes as a juice. She drinks one cup per day and describes the taste as 'bitter'. She was very clear that she has been 'feeling better since taking it'.* [TN] *was not able to say which herbs were in the juice but knew that it had 'B3, iron and calcium'".*

19. The report also noted that:

> *"*[TN] *expressed that she would be willing to attend for check-ups at her General Practitioners but would not go to the hospital for these. Again she expressed a lack*

of trust in the hospital and her perception that she was not listened to. She was clear that she did not like that there was no acceptance of her choice of following an alternative route to treat her symptoms."

20. Of particular significance was Dr Humphries' conclusion that TN fully appreciated the gravity of her condition. The report states that:

> *"*[TN] *was quite aware that her diagnosis had a poor prognosis and that death was a probable outcome. Despite this, given how she is currently feeling, she is quite positive and wants to continue feeling well. She understands the side-effects of traditional options and believes that these side-effects are worse than any potential benefits."*

21. Having considered the entirety of her assessment, Dr Humphries concluded:

> *"While* [TN] *may be making choices that are not in keeping with traditional Western medicine, she is making this choice based on her weighing of the options available to her and choosing one that she finds less distasteful in terms of side-effects and that, to date, has been of benefit to her.*
>
> *As, in my opinion,* [TN] *has capacity to make these decisions, then she is entitled to make those that are contrary to medical advice."*

22. The matter next came before the Court on 21 May 2026, however, as the report of Dr Humphries had only been made available that morning, the proceedings were adjourned until after the Whit Vacation to allow the parties to consider the contents of the report. The matter was listed for 19 June 2026.

23. Prior to the final hearing on 19 June 2026, the Court was furnished with a further affidavit sworn by the GAL which updated the Court as to her ongoing engagement with TN and

her views and wishes. Although TN did not wish to meet the GAL in person prior to the hearing, she and the GAL engaged by telephone on 17 June 2026. The GAL reported that:

> *"*[TN] *told me that she is doing very well, she is sleeping and eating well.* [TN] *told me that she is not in any pain and that she is able to complete all daily activities.* [TN] *informed me that she goes on walks in the fields surrounding her house, that she is able to help out at home with tasks such as cooking and playing with her siblings".*

24. The GAL further reported that TN remained firmly of the same view that she had previously expressed to the Court. In particular, she noted:

> *"When I asked her what she would wish to be conveyed to the Court, [TN] confirmed that she is due to commence her studies in 6th year in September and that she has been completing work at home. [TN] said that she wished for the Court to be informed of her desire to have privacy and for the court proceedings to conclude, to facilitate her and her family getting on with their lives. [TN] expressed that these were her own thoughts and that she was not being influenced in any respect."*

25. By the time the matter returned before the Court, on 19 June 2026, all parties had had an opportunity to consider the report of Dr Humphries. In light of the conclusions reached in that report regarding the minor's capacity to make decisions concerning her diagnosis, prognosis, treatment options and palliative care, the matter proceeded on 19 June 2026 for the purpose of determining what orders, if any, were required in light of the evidence before the Court. The CFA did not pursue its application for the orders originally sought.

3. Ex Tempore Judgment delivered on 19 June 2026

26. In my *ex tempore* judgment delivered on 19 June 2026 I noted that I agreed with the course that was proposed by Ms Patricia Brazil SC on behalf of the CFA, which was supported by all of the parties, and that was that, notwithstanding the very serious medical condition and diagnosis that TN has, no further orders were being sought in the minor wardship proceedings. The reason why no further orders were being sought was due to the very clear report and functional capacity assessment from Dr Karen Humphries.

27. In her comprehensive report, Dr Humphries expressed the clear and unequivocal opinion that TN has full capacity to take decisions in relation to her treatment and other needs. The way it was put by Dr Humphries was that she has the necessary capacity to make decisions in relation to her diagnosis, prognosis, treatment options, and palliative (or pain management) care.

28. TN is just short of her 18th birthday; she will turn 18 in September this year, at which time she would, of course, benefit from the presumption of capacity. It seemed to me that as TN was so close to 18 as made no material difference and as the opinion on capacity from Dr Humphries was so clear and unequivocal, there was no basis on which the Court could make orders under its minor wardship jurisdiction in this case.

29. I particularly took on board the very clear views expressed by TN herself, both to the GAL, Ms Ní Mhurchú, and to Dr Humphries. Those views were recorded in Dr Humphries' report and also in the second affidavit of Ms Ní Mhurchú, sworn on 18 June 2026. It was very clear from that evidence that TN fully understood her condition and fully understood what is likely to happen to her as her illness progresses. She fully understood that assistance may be provided by clinicians in the hospital, but that it would be of a pain management

nature rather than curative treatment. Her condition is terminal and she understood that to be the case. I was satisfied on the evidence that TN understood all of that.

30. It was also clear, and her views were expressly recorded, in the affidavit of Ms Ní Mhurchú of 18 June 2026, that TN wished to regain her privacy and for the court proceedings to come to an end; she wanted to be allowed, with her family, to get on with their lives; she wanted to recommence her studies for 6th year in September; and she wanted all of this intrusion in her life to cease.

31. I respect those views and I have to respect them particularly in circumstances where TN clearly has capacity to hold those views and to make those decisions. I completely accept the evidence of Dr Humphries and of Ms Ní Mhurchú on that critical question. TN is a remarkable young woman who has borne her serious illness with great dignity and fortitude with the support of her loving family.

32. I will say, however, that in my view the initial application by the CFA was entirely justified in circumstances where the position did at the time the application was brought seem to be unclear and where the risks to the life of TN were (and are) very great, and where there was a very understandable concern to ensure that she received, or, at least, had the option of receiving, all the necessary treatment and care as was clinically determined. Where there were these understandable concerns in the case of a 17 (nearly 18) year old girl whose capacity had not been assessed, I can readily appreciate why the CFA felt it was necessary to bring the application to invoke the Court's minor wardship jurisdiction.

33. As Mr Padraig D Lyons BL, who appeared for TN's parents, said, ultimately, the key to the way the case developed and the reason that it came to an end, was that there was a very constructive approach taken by everyone in the case, including by TN's parents and the

State agencies involved, all of whom agreed that the first critical step to be taken before deciding what, if any, substantive orders should be made, was to properly assess TN's capacity and that has now been done.

34. That was an approach that was wisely supported by the parties and ultimately brought to an end the need for these proceedings. I did not believe that it was necessary for any further application to be made to conclude the proceedings. I was satisfied to proceed on the basis that the CFA were not looking for any further orders and were not seeking to maintain the minor wardship summons in being.

35. I noted the position of the CFA and the HSE and the views of TN (through her GAL) and those of her parents, and I was satisfied to make orders striking out the minor wardship proceedings and vacating all the previous orders (bar the s.45 orders).

36. As noted earlier, I made an order at the outset of the proceedings, pursuant to s.45 of the 1961 Act, that the proceedings be heard otherwise than in public. That order remains in place.

37. I also made an order that the GAL be discharged and that her costs, including reserved costs, be paid by the CFA and adjudicated in default of an agreement. Additionally, following Mr Lyons BL's unopposed application for the parents' costs, and the fact that their involvement was very constructive and appropriate, I made an order for the parents' costs to be adjudicated in default of agreement and paid by the CFA. The HSE agreed to bear its own costs.

38. To conclude, I wish to record that I very much appreciated the attendance online for the hearing by TN and her parents and their solicitor, Mr Conor McGuill, and their attendance at the previous hearings. I want to thank them and wish them all the very best for the future.

Finally, I want to thank TN for her cooperation with the professionals and with the court process, and I sincerely wish her and her family the very best in what no doubt will be very difficult times to come. TN impressed me immensely and she clearly had the same impact on Dr Humphries and Ms Ní Mhurchú, the GAL.

Appearances:

The Child and Family Agency: Patricia Brazil SC, Nora Ní Loinsigh BL instructed by Office of Legal Services, Child and Family Agency

The HSE: Donal McGuinness BL instructed by Byrne Wallace Solicitors

The GAL (Seona Ní Mhurchú): Lewis Mooney BL instructed by Pól Ó Murchú Solicitors

The Parents: Padraig D Lyons BL instructed by Conor McGuill Solicitors