



THE HIGH COURT

[2026] IEHC 671

Record No. H. JR. 2025. 1838

BETWEEN

D.McC.

APPLICANT

AND

Health Service Executive

RESPONDENT

Judgment of Mr. Justice Barr delivered ex tempore on 9 October 2026.

Introduction.

1. This is a contested leave application in which the applicant, who is a litigant-in-person, seeks to obtain various reliefs against the respondent in relation to the care, or more particularly the lack of care, allegedly afforded by the respondent to the applicant's father and mother.
2. The applicant's statement of grounds is very extensive. It runs to approximately 75 pages in length. There are 25 separate reliefs sought, which are grouped under 14 different headings. In summary, the applicant's principal complaint is that she alleges that the HSE, and in particular their safeguarding team, did not adequately investigate

the numerous complaints that she has made to them concerning the alleged incapacity of her father and the alleged abuse of him by her siblings.

3. The applicant alleges that the respondent has failed in its statutory duty of care towards vulnerable people by failing to make a decision that her father lacks capacity and by failing to put appropriate supports in place to ensure that he can continue to live safely in his home. She alleges that the respondent has likewise been negligent in the carrying out of its duty to protect her mother, who has advanced dementia.
4. The applicant alleges that the safeguarding team in the respondent has failed over a number of years to have adequate regard to the fact that several medical professionals have expressed concern about her father's welfare. She points to the fact that her father's GP made a referral for her father to be seen by a neurologist, who subsequently diagnosed that he was suffering from mid-level Alzheimer's disease.
5. In addition, she points to the fact that due to his medical condition her father has been defrauded out of significant sums of money by criminal third parties. She alleges that on one occasion he was the victim of a sophisticated online scam carried out by criminal actors in Asia, as a result of which he lost €30,000.
6. She alleges that on another occasion he had transferred sums of money in the course of purported investments, which were in fact scams. He had reported this matter to the Gardaí. However, due to his lack of cognitive functioning, she alleges that he went to his bank on the following day and attempted to transfer a further €50,000 to the fraudulent third parties. Fortunately, the bank staff were vigilant and had concerns about this proposed transfer. They put a freezing order on his account pending an assessment of his cognitive ability.
7. The applicant also alleges that her siblings have combined to extract sums of money from her parents. She alleges that an interim barring order which was obtained by her

father against her, was in fact the result of pressure being put on her father by her siblings in an effort to get her removed from her parents' family home. She stated that when the interim barring order came back before the District Court in December 2025, she and her father attended at the court and her father assured the judge that it was not necessary to make a full barring order, or to grant any relief of that nature against the applicant.

8. The applicant alleges that in failing to put adequate supports in place for her father and mother, the HSE has reached decisions as to the level of her father's cognitive functioning which are irrational and unreasonable in the legal sense. The applicant maintains that in reaching those decisions over the years, the respondent has either ignored all the evidence that she has placed before it or has not had regard to that evidence at all.
9. It is in these circumstances that the applicant seeks the very considerable number of reliefs that she seeks in her statement of grounds as against the respondent.

The Respondent's Position.

10. The respondent objects to the grant of leave in this case on four grounds: first, the respondent submits that the applicant is not entitled at law to institute judicial review proceedings in respect of any decisions taken by the HSE concerning the care of her father. It was submitted that relief by way of judicial review is only available to a person who is directly affected by a particular decision. It was submitted that as the alleged decisions related solely to the capacity and care requirements of the applicant's father, she lacked locus standi to challenge the alleged decisions.

11. It was accepted that where a person was shown to lack capacity to take legal action or other steps on their own behalf, it was possible for third parties in certain circumstances to make applications to court on their behalf. However, in order for such third parties to act on behalf of the person concerned, they must have lawful authority to do so, either in the form of an enduring power of attorney that has been registered with the High Court, or by means of an authority given to the person by the High Court pursuant to the Assisted Decision Making (Capacity) Act 2015. It was submitted that the applicant does not have authority under either of these headings.
12. Secondly, it was submitted that while the applicant has made numerous complaints about alleged shortcomings in the care afforded to her father and mother by the respondent and in particular by its safeguarding team, she has not identified any particular decisions in respect of which certiorari or other relief is claimed. Instead, she has merely sought to make an omnibus claim of negligence and breach of duty against the respondent in relation to its alleged care of her father and mother on a continuous basis since approximately 2022 to date. It was submitted that in these circumstances the applicant had not identified any specific decisions which she sought to challenge.
13. Thirdly, it was submitted that the applicant's proceedings are manifestly out of time. Order 84 of the Rules of the Superior Courts provide that an application for relief by way of judicial review must be made within three months of the date of the impugned decision. It was accepted that in appropriate circumstances the Court has power to extend that time period. However, it was submitted that in this case, where the first involvement of the respondent with the applicant's father occurred as far back as 2022, there was no basis on which the applicant could maintain that her proceedings had been brought within the appropriate time, when her papers had been lodged in December 2025. Assuming that that date caused the clock to stop running, that would allow her

to challenge any decisions made by the respondent from September 2025 onwards, but she had not done so; instead preferring to mount a wide ranging and unspecific challenge to the conduct of the respondent in its care of her father and mother from 2022 to 2026. It was submitted but such a purported challenge was far outside the time period allowed under the rules for the bringing of judicial review proceedings.

14. Fourthly, it was submitted that the court should refuse to grant leave having regard to the extreme length of the statement of grounds and having regard to the lack of specificity therein.

Discussion and Conclusions.

15. It is well settled at law that the test which has to be applied where a party seeks leave to institute proceedings for relief by way of judicial review, is a relatively low threshold for the applicant to cross: see *G v DPP* [1994] 1 IR 374.
16. More recently, in *O'Doherty v The Minister for Health* [2023] 2 IR 488, O'Donnell CJ. stated as follows at paragraph 39:

The threshold is a familiar one in the law. It is, in essence, the same test which arises when proceedings are sought to be struck out on the grounds that they are bound to fail, or the test that is normally required in order to seek an interlocutory injunction. It must be a case that has a prospect of success (otherwise it would not be an arguable case) but does not require more than that. While, inevitably, individual judges may differ on the application of the test in individual cases at the margins, the test itself is clear. This test – it must be stressed – is solely one of arguability: it is emphatically not a test framed by reference to whether a case enjoys a reasonable prospect of success, still less a

likelihood of success. Any such language obscures the nature of the test and may on occasion lead to misunderstanding, appeal and consequent delay.

17. Where a leave application is brought on notice to the respondent, that does not change the nature of the test that has to be applied. Nor does it mean that the threshold that must be crossed by the applicant is any higher. What it means is that in crossing that threshold, the respondent is in a position to put forward arguments to show that the applicant has not in fact got an arguable case sufficient to satisfy the test set down in *G v The DPP* or in *O'Doherty v Minister for Health*.
18. In reality, it boils down to a situation where the respondent must establish that the applicant does not have an arguable case, but that instead his or her case is bound to fail for one reason or another.
19. In reaching its conclusions on this application, the Court has had regard to the statement of grounds and supporting affidavit and exhibits filed on behalf of the applicant and to her oral submissions to the Court at the leave hearing. It has also had regard to the report dated 8 March 2026 prepared by Ms. Kirsten Murphy, principal social worker with the respondent. That was a very detailed report outlining in summary form, all the interaction that was had between the safeguarding team and the applicant's father; and also with the applicant and her siblings. The court has also had regard to the letter from Dr. Justin Kinsella, consultant neurologist, dated 3 March 2026 in which it was stated that on that occasion he had discussed with the applicant's father the diagnosis that had previously been made of his suffering with Alzheimer's dementia. The court notes that in that letter, Dr. Kinsella stated that he was of opinion that the applicant's father had capacity to make decisions for himself.
20. What emerges from a consideration of the papers that have been placed before the court is that the applicant's mother, who continues to reside in the family home with her

husband and with the applicant, suffers from advanced semantic dementia. She requires full-time care and supervision.

21. It is also clear that the applicant's father has had a diagnosis of Alzheimer's dementia in the mild to moderate range.
22. It is also clear from the submissions that were made to the court by the applicant in the course of the hearing and from the matters set out in Ms. Murphy's detailed report, that there is considerable conflict within the family, primarily between the applicant and her three siblings. It is also clear from that report that the applicant has made numerous complaints to several statutory bodies complaining about the conduct of the social workers who have dealt with her parents as part of the respondent's safeguarding team. She also made complaints about the public health nurse who attended her parents. It is noteworthy that none of these complaints have been upheld to date.
23. I turn now to the specific grounds of objection put forward on behalf of the respondent as to why leave should not be granted in this case. The first ground of challenge is to the effect that the applicant does not have standing to bring these proceedings. I am satisfied that that submission is well-founded in law. With the exception of Article 40 applications, a third party may not make applications to the court for various forms of relief concerning another person unless they have been authorised to act as agent on behalf of that person.
24. Such authority may be obtained directly from the person concerned, for example where the person has been appointed an attorney under an enduring power of attorney in respect of the person concerned and the EPA has been registered and activated by the High Court. The applicant does not fall into that category as her father has named two of his other children as being his attorneys under his EPA.

25. A person may also obtain authority to act on behalf of another person where that person is shown not to have the requisite mental capacity to take decisions on their own behalf. In order to obtain such authority, a person would have to make an application under the Assisted Decision-Making (Capacity) Act 2015 and would have to obtain the necessary authority from the High Court to act on behalf of the person concerned. Again, the applicant has not obtained such authority.
26. Accordingly, I hold that the applicant does not have locus standi to maintain these judicial review proceedings which seek to challenge unspecified decisions taken by the respondent in relation to the care and support of her parents.
27. I am satisfied that the second ground of objection raised by the respondent to the grant of leave is also well-founded in law. It was to the effect that leave should not be granted because the applicant had not identified any specific decisions which had been taken by the respondent which were capable of being challenged by way of judicial review proceedings.
28. Having had regard to the content of the applicant's statement of grounds and having considered her affidavit and her oral submissions to the court, I am satisfied that what the applicant is attempting to do is to make a wide ranging series of unspecified complaints about the manner in which the respondent's safeguarding team have interacted with her parents, and with her father in particular, in the years 2022 to date. She has not identified specific decisions taken by the safeguarding team; nor has she identified any particular legal failings in any specific decisions which she seeks to challenge. Instead, she has sought to make a generalised complaint of breach of the duty of care owed by the respondent to her father on the basis that they had not intervened following their interviews and interactions with the applicant's father and with the applicant and with her siblings. That is not sufficient to enable a person to

bring judicial review proceedings in respect of the alleged shortcomings in the conduct of a statutory body over a number of years.

29. The third ground of objection was to the effect that the applicant's proceedings are out of time. I am satisfied that this objection also is well-founded in law. The relevant time period provided for under Order 84 of the RSC is that the challenge must be brought within three months of the date of the impugned decision. While the court has power to extend the time in appropriate circumstances, there has been no basis put forward as to why the court should allow the applicant to challenge the level of care afforded by the respondent to her father and mother over a period of four years from 2022 to 2026.
30. Finally, it was submitted that the court should refuse to grant leave on the basis that the matters pleaded in the applicant's extremely lengthy statement of grounds are not pleaded with the degree of specificity that is required under the rules as has been found in the case law on this topic: see *Leamlara Preservation Group v An Coimisiún Pleanála* [2026] IEHC 631; *Lofinmakin (A Minor) v Minister for Justice* [2011] IEHC 38. I accept that that submission is also well-founded. The applicant's statement of grounds is vague in the extreme. It would not be appropriate to grant leave to proceed by way of judicial review on foot of such a statement of grounds.
31. For all these reasons I must refuse to grant the applicant leave to proceed by way of judicial review.