APPROVED

[REDACTED]

THE HIGH COURT

IN THE MATTER OF THE POWERS OF ATTORNEY ACT 1996

AND IN THE MATTER OF AN INSTRUMENT CREATING AN ENDURING POWER OF ATTORNEY EXECUTED BY AA, THE DONOR,

ON THE 27TH OF MAY 2016

[2024] IEHC 123

Record No. EPA 2019 1

BETWEEN:

BB

APPLICANT

-AND-

CC

RESPONDENT

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 23rd day of February 2024

INTRODUCTION

Preliminary

1. The central issue which arises in this application concerns the exercise of the court's jurisdiction pursuant to section 12(2)(a) of the Powers of Attorney Act 1996 ("the 1996 Act"), to determine whether or not the meaning or effect of a power of attorney executed by a Donor on 27th May 2016 ("the instrument dated 27th May 2016") and registered by the Registrar of Wards of Court on 26th February 2020 is such as to give to the Respondent (Attorney)[1], the authority to make personal care decisions for the Donor, including where the Donor should live.

2. Section 12(2)(a) of the 1996 Act provides that the court may determine any question as to the meaning or effect of the instrument dated 27th May 2016 and it is that issue which this judgment addresses.

3. The application is predicated on a Notice of Motion dated 3rd November 2023, the first paragraph of which seeks an order of the court pursuant to section 12(2)(a) of the 1996 Act in the manner described above, with the second to fifth named paragraphs seeking various reliefs in relation to consultation and information in the event that the instrument dated 27th May 2016 is deemed to include personal care decisions.

[1] The terms "Attorney" and "Respondent" are used interchangeably in this judgment.

4. Mr. Michael Conlon SC and Mr. David Leonard BL appeared for the Applicant. Ms. Úna Tighe SC and Ms. Catherine Duggan BL appeared for the Respondent. Both Mr. Conlon SC and Ms. Tighe SC made comprehensive oral submissions to the court in addition to the detailed written Legal Submissions from counsel for both parties, and I will address particular points referred to in those submissions later in this judgment under the sub-heading 'Other Matters'.

Background

5. By way of brief background, the Donor ("AA") is now just over 90 years of age. The Attorney ("CC"), the Respondent in this case, is the son of the Donor and brother of the Applicant ("BB"), who is the Donor's daughter.

6. The Donor has been living in a nursing home since October 2020; as mentioned, the Enduring Power of Attorney (EPA)[2] in this case was executed by the Donor on 27th May 2016; the Respondent began to notice a decline in the Donor's cognitive and physical abilities in early 2019, and while papers were lodged to register the EPA in June 2019, due to the requirement to instruct a new firm of solicitors, the EPA was in fact registered by the Registrar of Wards of Court on 26th February 2020; in or around July/August 2019, both the Applicant and the Respondent became concerned about the Donor's ability to live independently and began to make arrangements to have him cared for at home; however, a short period after the carers were in place, the Donor expressed a resistance to the carers and a reluctance to allow them into his home and

[2] In this judgment the EPA is also referred to as "the instrument dated 27th May 2016."

from that point, for a period of almost one year, both the Respondent and, in particular, the Applicant (through visiting the Donor and bringing him meals) sought to provide the support the Donor needed at his home; the evidence before me is that the Donor's general condition began to regress from in or around November 2019 and progressively worsened, with the Donor being admitted to hospital on two occasions in March and June 2020 due to an infection; in or around September 2020 (during COVID), after the Donor attended a medical appointment accompanied by the Applicant, the medical advice at that time expressed an increasing concern about the Donor living alone and suggested that it was in his best interests, including for health and safety reasons, that he move to a nursing home; in or around October 2020 the Donor was accepted into residential nursing home care; the approach agreed by the Respondent and the Applicant, (representing their view as to what was in the Donor's best interests), was for the Applicant to inform the Donor that this would be for an initial 2-3 week period of respite care; the Donor has remained in residential nursing home care since in or around October 2020; in or around August 2023, the Applicant sought to give effect to the Donor's wishes to be discharged and brought home and the Respondent indicated his view (which appears to be also the view of the Applicant) that prior to any decision to move the Donor out of the nursing home and back to his home, a full and comprehensive assessment would have to be carried out.

7. I do not think it is apposite, for the purposes of this judgment, to rehearse the precise difficulties which have arisen in the relationship between the Applicant and the Respondent. In her recent judgment in *JO'N & SMG v NB* [2024] IEHC 72 at paragraph 1, Jackson J. captured generally the essence of how familial difficulties and differential perspectives can arise in such cases in the following observation: "*[t]here is no doubt*

that one of the most significant challenges which any family faces is coming to terms with the ageing of a parent and the making of appropriate arrangements in that context. This is particularly difficult when the ageing process cruelly includes illness and incapacity. Informed by emotion, family history and, above all, deep affection, perspectives may differ as to the appropriate route of travel and this, unfortunately, leads to acrimony and divergence despite there being a commonality of result sought to be achieved namely that the parent be safe, comfortable and protected. In this case, although opinions have differed, I have no doubt that the actions of all have been primarily dictated by parental affection."

8. At this juncture, therefore, both the Applicant and the Respondent (Attorney) agree on the following matters:

    (a) their father, the Donor, has expressed a wish to return home and that he wishes to die at home;

    (b) their father's wish to return home should be accommodated, if it is possible, practical and safe to do so;

    (c) if the Donor is to return home, appropriate care provision will have to be put in place and that will require a prior assessment of the Donor in order to identify his particular needs at this time; and

    (d) there is agreement that an organisation such as, for example, the Mercer Institute of Advanced Aging at St. James' Hospital (MISA), are an appropriate body to carry an initial assessment to identify the Donor's specific care needs (although the Applicant is open to alternative proposals in this regard).

9. The central reason why the Donor's wishes appear not to have been realised is because the Donor does not wish to undergo such an assessment and his doctor (GP) is of the view that the Donor's decision in this regard should be respected and he has declined, therefore, to make such a referral.

10. The immediate background to the Applicant initiating this application arises from a letter dated 13th September 2023, from the Decision Support Service ("DSS"), extending the time frame of its investigation arising from the Applicant's complaint made pursuant to the Assisted Decision-making (Capacity) Act 2015 (as amended) ("the 2015 Act") and received initially on 16th June 2023, in relation to the Respondent acting as Attorney for the Donor under the 1996 Act. Again, by way of a general observation, that complaint perhaps marks the crystallisation of the point of disharmony between the Applicant and the Respondent. As stated, for the purposes of this judgment, it is not necessary for me to address the detail of their respective counter-positions, suffice to say that the evidence before me suggests that (a) there are important matters in relation to their father upon which the Applicant and Respondent are agreed, and, (b) for a number of years, the Applicant and Respondent worked closely together in seeking to achieve the best interests of their father.

11. The letter dated 13th September 2023 from the DSS stated that that timeframe for its decision (*i.e.*, either making a finding of "well-founded" or "not-well founded") in relation to the complaint would be before 16th March 2024.[3] That letter precipitated the

[3] In a further letter to the Applicant dated 16th November 2023 the Decision Support Service refers to its view expressed to the Attorney's Solicitors that the Enduring Power of Attorney (EPA) does not cover personal care

Applicant issuing the Notice of Motion in this application. In the most recent Affidavit sworn by the Applicant on 8th December 2023 she avers at paragraph 6 that she is "… *actively considering whether it would be appropriate for a decision making representative to be appointed in connection with the decision on where my father should live. It might be appropriate that I would be appointed as the decision making representative*." Such an application is a matter for the Circuit Court pursuant to the 2015 Act.

12. Much of the correspondence between the solicitors for the Applicant and the Attorney centres on whether or not the required 'consultation' took place within the meaning of the instrument dated 27th May 2016. The Applicant, for example, points to a letter from the Attorney's Solicitors to the Applicant's solicitors dated 22nd September 2023 which *inter alia* states that "*[o]ur client will not be responding to your requests for*

decisions, "*[t]he EPA gives general authority for the management of property and affairs with the restriction or condition that the donor be allowed to remain in his own home for as long as possible. No provision is made for personal care decisions in this instrument* …".

information/documentation as set out in items 3[4]*, 4*[5] *& 5*[6] *in circumstances where he is under no obligations to do so*." Similarly, the evidence before the court is that the Applicant was not only consulted but was integrally involved in the decision to put carers in place in 2019 at the Donor's home and then the decision to move the Donor to a care home in 2020.

13. Given that the Donor is 90 years of age, has been living in a nursing home since in or around October 2020 and has an extant wish to return home, there is a certain urgency to these matters. As stated earlier, the evidence before me is that the Donor's general condition has declined from in or around November 2019 and is progressively worsening, such that his care needs today will have increased. Accordingly, in this judgment, I address the central issue, namely the meaning and effect of the instrument dated 27th May 2016. The judgment also refers to other matters and I think it is appropriate that the parties have an opportunity to address those issues further. Also, in seeking to determine its meaning and effect, the description of the instrument dated 27th May 2016 as a '*living document*' recognises that the factual circumstances and context

[4] The letter dated 13th September 2023 from the Applicant's solicitor stated at numbered paragraph 3 "*[y]our letter of 6 September referred to "advice received by our client" with respect to referral for assessment. We requested that you provide a copy of this advice to us and that hasn't been done. We would request that you provide it now to us*".

[5] The letter dated 13th September 2023 from the Applicant's solicitor stated at numbered paragraph 4 "*[i]n our letter of 30 August, we requested a copy of all letters of instruction to the relevant experts and the reports that are produced. We would ask you to respond to this request. Our client would propose that she would work together with your client with respect to the relevant assessments*".

[6] The letter dated 13th September 2023 from the Applicant's solicitor stated at numbered paragraph 5 "*[w]e repeat our request for a copy of the letters that you have written to Prof. Power since early June*".

of the Donor's situation today have evolved and are different from those which existed at the time of the initial execution of the EPA on 27th May 2016 (and its subsequent activation thereafter).

THE MEANING OR EFFECT OF THE POWER OF ATTORNEY INSTRUMENT DATED 27th MAY 2016

14. The instrument comprising the Power of Attorney in this case is dated 27th May 2016[7], and states as follows (the instrument has been redacted for the purposes of this judgment):

> "*<u>Part B</u>*
>
> *I, [AA], of [Address set out] born on the [Date of Birth set out] hereby appoint [CC] [Name and Address set out] to act as my attorney for the purposes of Part II of the Powers of Attorney Act, 1996, with general authority to act on my behalf in relation to all my property and affairs subject to the following restrictions and conditions:*
>
> *(1) I wish to reside in my home at [Address set out] for as long as possible and therefore if I become incapable of living independently and managing my own affairs, in the first instance I direct that my*

[7] It was submitted on behalf of the Applicant and the Attorney that the instrument dated 27th May 2016 was not a general power of attorney referred to in section 16, and in the form set out in the Third Schedule, of the 1996 Act.

Attorney is to make arrangements for me to be cared for at home by suitably qualified persons.

My daughter, [BB] should be consulted for her views as to my wishes and feelings and as to what would be in my best interests.

I am required to give notice of the execution of this power to at least two persons.

I shall notify the following persons accordingly: –

(1) [BB and address given]

(2) [AB and address given]

I intend this power to be effective during any subsequent mental incapacity of mine.

I have read or have read to me the information in paragraphs 1 to 13 of Part A of this document.

Signed by me _____

[AA]

On the 27th day of May 2016

In the presence of : [NAME GIVEN]

Full name of witness: [NAME GIVEN]

Address of witness: [ADDRESS SET OUT]".

15. The instrument dated 27th May 2016 is made under the 1996 Act and S.I. No. 196/1996 – Enduring Powers of Attorney Regulations, 1996.

16. The 1996 Act has been described as marking a significant milestone in the development of welfare-oriented protections and supported decision-making structures for older citizens which aimed to meet the requirements of Article 12 of the United Nations Convention on the Rights of Persons with Disabilities and that the scheme of the 1996 Act is orientated towards the welfare of the donor: *E&F v G&H* [2021] IECA 108[8] per Whelan J. at paragraph 45. The intent of the Oireachtas was to provide for a procedure which permits a donor to determine in advance who should make decisions in their best interest should they become incapacitated: *CA v BW & MA* [2020] IECA 250[9] per Donnelly J. at paragraph 67. Most recently, this court (Jackson J.) in *JO'N & SMG v NB* [2024] IEHC 72 at paragraph 3, described the statutory framework introduced by the 1996 Act as novel for this jurisdiction and that it "… *clearly represents a desirable legal facility for persons who wish to make arrangements for the management of their affairs when and if they cease to be capacitous. An EPA is executed at a time when the donor has capacity and it thereafter sits in abeyance, ready to be activated when capacity is lost. The activation process is through registration by application to the High Court* …".

17. While the decision of the Court of Appeal in *CA v BW & MA* [2020] IECA 250 concerned the basis on which a court should exercise its jurisdiction under section

[8] Edwards, Whelan and Ní Raifeartaigh J. The judgment of the Court was delivered by Whelan J.

[9] Donnelly, Noonan and Murray JJ. The judgment of the Court was delivered by Donnelly J.

12(2)(b)(iv) of the 1996 Act to give directions as to a personal care decision taken by an attorney under an EPA, which had been registered pursuant to the 1996 Act and involved questions concerning the placing of the Donor in long term residential care, and therefore did not relate to the question of conditions and restrictions (which arise in this case), Donnelly J. endorsed the decision of the High Court (Baker J.) in *AA v FF* [2015] IEHC 142 (which involved a general power of attorney covering both financial and personal care decisions that had been granted to the second wife of the Donor and their daughter and the seeking of directions under section 12 of the 1996 Act), which found that an attorney acting under a registered EPA was closer in characterisation and function to *an agent* rather than as a trustee or as a committee acting in wardship.

18. In approaching the question of interpretation, therefore, recognition must be given to the fact that the Attorney in this case was nominated by the Donor to act on his behalf and at a time when the Donor's capacity was not in doubt. The 1996 Act, therefore, recognises the autonomy of a person to choose an alternative or substitute decision-maker should the Donor become incapable. To paraphrase an observation by Baker J. (in *AA v FF* [2015] IEHC 142), referred to at paragraph 60 in the judgment of Donnelly J. in *CA v BW & MA* [2020] IECA 250, the 1996 Act must be seen as a recognition by the Oireachtas of the desirability of giving a power of management and administration to a person of the Donor's choice and accordingly the Oireachtas implicitly respects that choice.

19. The central question in this application arises pursuant to section 12(1)(a) of the 1996 Act, which provides that the court may determine any question as to the meaning or effect of the instrument dated 27th May 2016.

20. For the following reasons, I am of the view that the instrument dated 27th May 2016 is *not* such as to give the Attorney the authority to make personal care decisions, including *where* the Donor should live.

21. The first paragraph immediately under the sub-heading 'PART B' provides that the Donor has appointed the Respondent to act as his attorney for the purposes of Part II of the 1996 Act, with general authority to act on his behalf in relation to all of his property and affairs "*subject to*" what is further described as "*the following restrictions and conditions*."[10]

22. The instrument dated 27th May 2016 reflects the provisions of sections 6(1) and 6(2) of the 1996 Act.

23. Section 6(1) of the 1996 Act provides, for example, that an EPA may confer general authority – defined in section 6(2) of the 1996 Act – on the attorney to act on the donor's behalf in relation to all (or a specified part) of the property and affairs of the donor (or may confer on the attorney authority to do specified things on the donor's behalf) and the authority may, in either case, be conferred <u>*subject to conditions and restrictions*</u>. Thus, contrary to the factual position which the Court of Appeal addressed in *CA v BW & MA* [2020] IECA 250 (per Donnelly J at paragraph 5), the instrument dated 26th May 2016 contains express *restrictions and conditions* in this case. Accordingly, a central distinguishing feature is that the decision in *CA v BW & MA* [2020] IECA 250 also

[10] Underlining added.

involved a personal care decision which invoked the High Court's jurisdiction pursuant to section 12(2) (b) (iv) of the 1996 Act.

24. Further, in this regard, section 6(2) of the 1996 Act provides that "*[w]here an instrument is expressed to confer general authority on the attorney, it operates to confer, subject to the restriction imposed by subsection (5) and to any conditions or restrictions contained in the instrument, authority to do on behalf of the donor anything which the donor can lawfully do by attorney*."

25. Section 6(5) of the 1996 Act is expressed as being "*[w]ithout prejudice to subsection (4)*", and section 6(4) is stated to be "*[s]ubject to any conditions or restrictions contained in the instrument …*".

26. The first paragraph of the instrument appoints CC to act as the Donor's attorney for the purposes of Part II of the 1996 Act *with general authority to act on his behalf in relation to all his property and affairs* - "affairs" in this context means the business or financial affairs of the Donor.[11] The reference to "*subject to the following restrictions and conditions*" is a reference to *the qualification* on that general authority which is set out in the paragraph which follows and is numbered '1'. That qualification is not, however, whether the Donor should live at home or in, for example, a care home. It is unambiguous. It states that the Donor wishes to reside in his home for as long as possible and in the event that the Donor becomes incapable of independent living and

[11] Section 4(1) of the 1996 Act defines "affairs", in relation to a donor of an enduring power, means business or financial affairs of the donor.

managing his own affairs, the Attorney "in the first instance" is directed to make arrangements for the Donor to be cared *at home* by suitably qualified persons.

27. There are, therefore, two aspects to this qualification: the first addresses the circumstances where the Donor *is* capable of independent living and managing his own affairs and the second is where the Donor is *not* capable of independent living and managing his own affairs. In the second scenario, therefore, the Attorney 'in the first instance' is directed to make arrangements for the Donor to be cared at home by suitably qualified persons.

28. Both are based, however, on the assumption that the Donor remains at home. The difference is whether this is done *with* or *without* assistance from suitably qualified persons.

29. Whilst section 6(6) of the 1996 Act provides that "*[a]n enduring power may also confer authority on the attorney to make any specified personal care decision or decisions on the donor's behalf*", the instrument dated 27th May 2016 does not contain a provision (or provisions) requiring or making provision for a decision to be made as to (a) where the donor should live and (b) with whom the donor should live.[12] That simply is not provided for. The instrument dated 27th May 2016 is silent as to a personal care

[12] Section 4(1) of the 1996 Act defines "personal care decision", in relation to a donor of an enduring power, means a decision on any one or more of the following matters: (a) where the donor should live, (b) with whom the donor should live (c) whom the donor should see and not see (d) what training or rehabilitation the donor should get, (e) the donor's diet and dress, (f) the inspection of the donor's personal papers, (g) housing, social welfare and other benefits for the donor.

decision. As stated, the instrument is predicated on the assumption that the Donor resides at his home. The only decision to be made is whether or not the Donor at some point will need to be cared for at home by suitably qualified persons. This was a specific direction to the Attorney which the Donor opted for in this case.

30. Further the prescribed format in S.I. No. 196/1996 differentiates between the insertion of conditions and restrictions, on the one hand, and the prescribed matters which comprise a personal care decision, on the other hand. For example, according to S.I. No. 196/1996, a personal care decision would be introduced with the following paragraph "… *and with authority to take on my behalf decisions on the following matters*".

31. Paragraph 6 in S.I. No. 196/1996 addressing the '*Notice to donor and attorneys*' in the First Schedule (instrument creating Enduring Power of Attorney, Prescribed Form, Part A: Explanatory Information) and under the sub-heading "*Effect of creating enduring power: information for donor*" states:

> "*6. [y]ou may authorise the attorney(s) to take certain personal care decisions on your behalf, e.g. deciding where you shall live. If you decide to do so, you should indicate, at the place marked [3] in Part B of this document, the particular personal care decisions you want to authorise. <u>You should also name any person you would like the attorney to consult so that the attorney can have regard to that person's</u>*

views as to your wishes and feelings and as to what would be in your best interests."[13]

32. While this may explain the reference to "*[m]y daughter, [BB] should be consulted for her views as to my wishes and feelings and as to what would be in my best interests*", in the instrument dated 27th May 2016, it does not mean that the reference to the circumstances of when the Donor is capable and incapable of independent living and managing his own affairs in the preceding paragraph could be construed in anyway as a personal care decision as defined in section 4(1) of the 1996 Act, simply because paragraph 6 in the '*Notice to donor and attorneys*' which addresses personal care decisions also references naming a person who has an insight into the Donor's wishes and feelings and his best interests. The correct interpretation is, rather, encapsulated in the following part of an extract of the written Legal Submissions of Ms. Tighe SC and Ms. Duggan BL (for the Respondent) (beginning 13 lines down at paragraph 44.4, pp.18 (of 31) and 34 of the Updated Book of Core Documents and Written Submissions) where they submit, "*[h]owever, arguably more consistent with the clear desire of the Donor to live at home – independently until he became incapable of so doing, and thereafter, with the benefit of suitably qualified (professional) carers – is that in the event that the possibility of living at home was under consideration at any later point in time, the Donor intended that the Attorney, in consultation with his sister, should make arrangements for him (the Donor) to be cared for at home*", *i.e.*, it is in relation to those matters – making arrangements for AA to be cared at home by suitably

[13] Emphasis added.

qualified persons – that his daughter, BB, is to be consulted by CC for her views as to AA's wishes and feelings and as to what would be in his best interests.

33. As mentioned, whilst section 6(6) of the 1996 Act provides that an EPA may also confer authority on the attorney to make any specified personal care decision or decisions on the Donor's behalf, I am not of the view that the instrument dated 27th May 2016 contains specified personal care decisions and, therefore, as a corollary to that, section 12(2)(b)(iv) of the 1996 Act – which provides that the court may give directions with respect to a personal care decision made or to be made by the attorney – is not engaged and does not arise.

34. Consequently, arising from my determination that the instrument dated 27th May 2016 does not give the Attorney the authority to make personal care decisions, it is not necessary for me to determine the claims and counter-claims which are made by the Applicant and Respondent in the context of the issue of 'consultation'.

35. Whilst it is suggested on behalf of the Attorney that the instrument dated 27th May 2016 might have been more clearly drafted, the instrument is sufficiently clear in reflecting the wishes of the Donor to reside in his home. As stated, the instrument dated 27th May 2016 addresses whether the Donor is living at home by way of independent living or living with care and assistance. It is not a choice between living at home or moving to a care home or other similar place. In the event that the Donor becomes incapable of independent living and managing his own affairs, the Attorney "*in the first instance*" is directed to make arrangements for the Donor to be cared at home by suitably qualified persons. Notwithstanding the fact that the Donor was moved from care at home to

residential care in 2020, I do not believe that it is possible to 'read in' to the instrument dated 27th May 2016, or to interpret the phrase "*in the first instance*", as incorporating the option of moving the Donor to full time nursing home care. As stated earlier, I interpret the paragraph numbered (1) as a restriction or a condition (*i.e.*, a qualification) on the appointment of CC to act as AA's attorney for the purposes of Part II of the Powers of Attorney Act, 1996 with general authority to act on his behalf in relation to all his property and affairs.

36. The following general points in relation to the Assisted Decision-making (Capacity) Act 2015 (as amended) were referred to: first, the principal court under the 2015 Act is the Circuit Court (which includes, for example, the power of the Circuit Court at section 38 of the 2015 Act to make orders and appoint a decision-making representative) with the express reservation of certain matters for the jurisdiction of the High Court in section 4 with section 4(5) of the 2015 Act stating that "… *nothing in this Act shall affect the inherent jurisdiction of the High Court to make orders for the care, treatment or detention of persons who lack capacity*"; second, Part 2, section 8 of the 2015 Act sets out a number of 'guiding principles' which, it is submitted, emphasises the concept of 'personal autonomy' over 'best interests.'

37. I am satisfied that any potential over-lapping jurisdiction which *could possibly* arise in the future with the jurisdiction of the Circuit Court in the exercise of its jurisdiction under the 2015 Act does not prevent this court from exercising its jurisdiction pursuant to section 12(2)(a) of the 1996 Act.

OTHER MATTERS

38. During this application, it was submitted on behalf of the Respondent that it was important to contextualise matters. While that submission was primarily made in the course of a detailed response addressing the Applicant's complaints about 'consultation', there is, as referred to earlier, a degree of urgency in relation to these matters.

39. In *AA v FF* [2015] IEHC 142, beginning at paragraph 72 of the judgment, this court (Baker J.) *inter alia* observed that the High Court's powers were "… *set out in s. 12 of the Act of 1996 and it ought to be noted at the outset that the Court's power is not one described as being exercisable by it of its own motion, and the Court has the statutory functions vested in it only on application by either the donor, the attorney or any other interested party, as defined in the legislation.*" Earlier in that judgment, the court also, on the facts of that case, differentiated between the standing of different parties.

40. I have, therefore, in this judgment addressed only those matters which are within the four corners of the notice of motion brought by the Applicant in this case.

41. It will be a matter for the parties to address how and in what circumstances, if any, this court could consider the options set out at paragraph 62 of the Respondent's written Legal Submissions particularly having regard to the judgment of the Court of Appeal (Donnelly J). *CA v BW & MA* [2020] IECA 250, including in relation to medical evidence.

42. In the circumstances, therefore, I find, pursuant to section 12(2)(a) of the 1996 Act, that the meaning or effect of the instrument dated 27th May 2016 is not such as to give the respondent (Attorney) the authority to make personal care decisions, including where the Donor should live and consequently a consideration of the provisions of section 12(2)(b)(iv) of the 1996 Act (which provide that a court may give directions with respect to a personal care decision made or to be made by the attorney) do not arise.

PROPOSED ORDERS

43. Accordingly, I propose to make an order pursuant to section 12(2)(a) of the 1996 Act, determining that the meaning or effect of the instrument dated 27th May 2016 is not such as to give the respondent (Attorney) the authority to make personal care decisions, including where the Donor should live.

44. I will put the matter in before me at 10:15 on Thursday 29th February 2024 and I will hear the parties on any ancillary and consequential matters which arise.