

Neutral Citation No: [2026] NICA 35	Ref:	TRE13084
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No:	19/103847
	Delivered:	29/06/2026

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

AB

Appellant

and

WESTERN HEALTH & SOCIAL CARE TRUST

Respondent

The appellant appeared as a Litigant in Person
Mr S Ramsey KC and Ms P McKernan (instructed by the Directorate of Legal Services) for
the Respondent
Mr A Magee KC with Mr M McHugh (instructed by Quigley Grant & Kyle Solicitors) for
the Father
Ms M Smyth KC with Mr M McAleer (instructed by Caldwell Robinson Solicitors) for
the Child

Before: Treacy LJ, Horner LJ and O’Hara J

TREACY LJ (delivering the judgment of the court)

Introduction

[1] The appellant appeals the judgment of Kinney J, refusing the application by the mother in family proceedings for XY to act as her McKenzie friend/advocate. We previously gave oral reasons for dismissing her appeal.

Background

[2] The appellant made the case and insisted that her application before Kinney J was confined to the latter role of advocate, which she asserts was not a matter for the courts but was, in effect, her inalienable right. As a matter of law and procedure, that is plainly not right. As the judge recognised at para [17] of his judgment [2024] NIFam 18, any such assistance, whether it is by way of McKenzie friend or by way of an advocate with rights of audience is a matter for the court. At paras [3]–[35] he sets out the detailed background which it is unnecessary for us to repeat here.

[3] This was the appellant's second such application the first having been considered and refused by McFarland J in [2023] NIFam 22. This was a reserved written decision which sets out in detail why XY was not suitable to act as a McKenzie friend. In his judgment, referring to correspondence that XY had sent to the judge relating to the case, McFarland J said:

"[25] This type of correspondence is entirely inappropriate and displays not only a basic lack of understanding of practise and procedure in the courts but also a similar lack of understanding of core fundamental aspects of what a fair and transparent hearing before an impartial tribunal actually involves.

[26] There is certainly new evidence of XY acting to date in a positive manner in this case.

[28] [she] is not a suitable person to act as a McKenzie friend for the mother."

[4] The appellant appealed that decision. That appeal was out of time and no explanation was provided for the delay. The appeal was dismissed by the LCJ who affirmed the ruling of McFarland J.

[5] McFarland J was clear that the mother would benefit from either legal representation or could make an application for another person to act in the role of Mckenzie friend. Notwithstanding that clear indication, the appellant has not sought legal representation and has not applied for another person to act as her McKenzie friend. On the contrary, the appellant simply renewed her application in respect of XY.

[6] In his ruling on the renewed application Kinney J referred to that judgment noting that confidentiality was to the fore of McFarland J's mind and that those concerns remain. At para [13], Kinney J stated as follows:

"[13] The mother renewed her application for XY to be allowed as her McKenzie friend or advocate. McFarlane's principal concern was the issue of XY's conduct. After the court determined that XY was not a suitable McKenzie friend she continued to remain involved in the mother's case. The mother had been provided with disclosure by the Trust and gave an undertaking not to share that information with anyone. It appeared from a comment from the mother that XY had accessed approximately 90% of that documentation. XY was present in court and was allowed to remain pending the resolution of the

application. It was made clear to her that she could play no active role. Despite that warning and indeed further warnings given to XY, she continued to be actively involved. I am satisfied that the concerns expressed by McFarland J are not only well grounded but that those concerns remain. XY has continued to play a role in these proceedings which she is not entitled to play. I am satisfied that XY is not suitable to participate in these proceedings either as a McKenzie friend or as an advocate. I also reminded the mother that she is entitled to seek the assistance of a McKenzie friend and indeed would be encouraged to seek either such help or further legal representation. She simply cannot have the assistance of XY.”

[7] Kinney J at para [16], noted that when the matter came on for final hearing in September 2024 the mother made further applications many of which were a repeat of applications previously made. The mother sought again the appointment of XY as her advocate. The judge dealt with this further application at para [17] of his judgment where he stated as follows:

“There had been no further change in circumstances regarding the application for assistance from XY, other than the mother now requesting that assistance by way of advocate rather than McKenzie friend. The mother maintained that she was entitled to the advocate of her choice. The mother had read the practise guidance on McKenzie friends and rights of audience, and I explained that any such assistance was a matter for the court. In all the circumstances, I confirmed that XY was not a suitable advocate or McKenzie friend but that the mother would be encouraged to seek assistance from someone else. She refused to do so”

[8] We are quite satisfied that no proper basis has been established which would justify the court in interfering with the decision that XY is not an appropriate person to act either as a McKenzie friend or as an advocate. We say that considering her involvement in this case to date and the well-reasoned conclusions of McFarland J and Kinney J, in their separate written judgments. We further note that the refusal of McFarland J to permit XY to act as a McKenzie friend was unsuccessfully challenged in the Court of Appeal.

Recusal

[9] The appellant also appealed against the decision of Kinney J not to recuse himself. We can deal with this point shortly. For the reasons set out in the

respondent Trust's position paper and the skeleton arguments that have been furnished by other parties, the appellant has failed to establish actual or apparent bias, applying the objective test of a fair minded and informed observer.

[10] As the exchanges between the court and the parties made clear, the trial judge conducted the case before him with conspicuous fairness and patience, and any suggestion to the contrary is wholly devoid of merit.

[11] For the reasons set out at para [27] of the respondent Trust's skeleton argument, we reject the remaining grounds of appeal which are also wholly devoid of merit.