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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**12/10/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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Between:

ROBERT DUNCAN

Plaintiff

and

WILLIAM ANTHONY McNALLY and JOSEPH McGEOWN as executors of the estate of George Hammond (deceased), DAVID McCRUM, BRIAN McCRUM, ALISON STREET, HELEN SAUNDERS, HAROLD DUNCAN and MARY GILMOUR

Defendants

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John Maxwell (instructed by Collins Solicitors) for the plaintiff
Colin Henry (instructed by John J McNally & Co, Solicitors) for the first and second defendant executors
Mark McEwen (instructed by Rosemary Gawn Solicitors) for the third to sixth defendants
Lisa Moran (instructed by McIntosh Solicitors) for the seventh and eighth defendants

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SCOFFIELD J

Introduction

[1] This is an application for appointment of the daughter of the plaintiff as his next friend for the purpose of these proceedings. The application was made by Mr Maxwell for the plaintiff. Each of the defendants was neutral on the application, although Mr McEwen raised a number of issues which, he submitted, required careful consideration in order to ensure that the court was satisfied that the test for appointment of a next friend was met. I am grateful to counsel for their brief submissions on the matter. I have set out this short ruling in writing in order to inform further such applications.

[2] The action is a proprietary estoppel claim by which the plaintiff challenges the disposal of Leckagh Farm (comprising 43 acres and a dwelling house) at

Magherafelt by way of the will of George Hammond, deceased. The application is listed for hearing in early November. There is accordingly a degree of urgency to the present application.

Relevant statutory provisions and rules

[3] Order 80 of the Rules of the Court of Judicature (Northern Ireland) 1980 makes provision for litigation involving persons under a disability. By virtue of Order 80, rule 1, a "person under a disability" means a person who is a minor or "a person who by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 is incapable of managing or administering his property and affairs." "Patient" is separately defined as "a person suffering or appearing to be suffering from mental disorder as defined in Article 3 of the Mental Health (Northern Ireland) Order 1986."

[4] RCJ Order 80, rule 2 sets out the general position that a person under disability must sue or defend proceedings by a next friend or guardian ad litem, as the case may be. Rule 2(1) is in the following terms:

> "A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not defend, make a counter-claim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian ad litem."

[5] Rule 2(2) provides that, generally, anything which in the ordinary course of proceedings is required or authorized by the rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem. By virtue of rule 2(3), a next friend or guardian must act by a solicitor.

[6] Rule 3 makes provision for the appointment of a next friend or guardian. Save in limited circumstances, an order appointing a person as next friend or guardian ad litem of a person under a disability is not necessary. However, one instance where this *is* necessary is set out in rule 3(4), that is "where, after any proceedings have been begun, a party to the proceedings becomes a patient." In those circumstances, "an application must be made to the Court for the appointment of a person to be next friend or guardian ad litem, as the case may be, of that party." That is the situation which is said to have arisen in the present case. (The other situations where a court order is necessary is where a next friend or guardian is to be replaced by someone else or where a person under disability is in default of appearance in ongoing proceedings: see Order 80, rule 3(3) and rule 4.)

[7] This case is said to be a rule 3(4) case on the basis that the plaintiff has become a patient in the course of the proceedings.

[8] There is a distinction between the two key defined terms used in Order 80 for present purposes. A patient is someone "suffering *or appearing to be suffering* from mental disorder." A person under disability may be a person "who by reason of mental disorder… is incapable of managing or administering his property and affairs." The relevant legal disability is related to *capacity* to manage one's property and affairs. It may arise either through mental disorder or minority. It seems to me that the two phrases – "patient" and "person under disability" through mental disorder – must be read together, since they are used interchangeably at various points within Order 80. A patient will, of course, only be a person under disability where they lack the requisite capacity (it being quite possible that someone may be suffering from a form of mental disorder which does not render them incapable of managing their affairs). However, someone who lacks capacity as a patient may do so where they are suffering *or appear* to be suffering from a mental disorder, leaving some room for flexibility where a formal diagnosis has not been provided.

[9] The other important statutory source in this context is the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order"). This contains an interpretation section at article 2. 'Patient', except in Part VIII in the 1986 Order, is defined in the same manner as in RCJ Order 80, namely "a person suffering or appearing to be suffering from mental disorder." In turn, "mental disorder" and related expressions are defined in article 3. Article 3(1) is in the following terms:

> "In this Order—
>
> "mental disorder" means mental illness, mental handicap and any other disorder or disability of mind;
>
> "mental illness" means a state of mind which affects a person's thinking, perceiving, emotion or judgment to the extent that he requires care or medical treatment in his own interests or the interests of other persons;
>
> "mental handicap" means a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning;
>
> "severe mental handicap" means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning;
>
> "severe mental impairment" means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously

irresponsible conduct on the part of the person concerned."

[10] Returning to the provisions of the court rules, pursuant to Order 80, rule 3(5):

> "Except where the next friend or guardian ad litem, as the case may be, of a person under disability has been appointed by the Court –
>
> (a) the name of any person shall not be used in a case or matter as next friend of a person under disability,
>
> (b) an appearance shall not be entered in a cause or matter for a person under disability, and
>
> (c) a person under disability shall not be entitled to appear by his guardian ad litem on the hearing of a petition. summons or motion which, or notice of which, has been served on him,
>
> unless and until the documents listed in paragraph (6) have been filed in the appropriate office."

[11] The documents referred to in paragraph (5) are, pursuant to rule 3(6), the following:

> "(a) a written consent to be next friend or guardian ad litem, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian;
>
> (b) where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised to conduct the proceedings in the cause or matter in question in the name of the patient of on his behalf, an office copy, sealed with the official seal of the Office of Care and Protection, of the order or other authorisation made or given under Part VIII of the Mental Health (Northern Ireland) Order 1986 by virtue of which he is so authorised; and
>
> (c) except where the person proposing to be such friend or guardian of the person under disability,

being a patient, is authorised as mentioned in sub paragraph (b), a certificate made by the solicitor for the person under disability certifying –

(i) that he knows or believes, as the case may be, that the person to whom the certificate relates is a minor or a patient, giving (in the case of a patient) the grounds of his knowledge or belief; and

(ii) where the person under disability is a patient, that there is no person authorised as aforesaid; and

(iii) except where the person named in the certificate as next friend or guardian ad litem, as the case may be, is the Official Solicitor, that the person so named has no interest in the cause of matter in question adverse to that of the person under disability."

[12] The required documents are therefore (1) a written consent to act by the prospective next friend or guardian; *and* (2) an authorisation to act under the 1986 Order (such as a controllership order) where this has been granted; *or* (3) a solicitor's certificate dealing with the need for the appointment and the suitability of the relevant candidate.

[13] It will be noted from the opening words of Order 80, rule 3(5) (quoted at para [10] above) that these documents are *not* required where the next friend or guardian has been appointed by the court. The rules do not provide that, where the court is asked to make an order appointing a next friend or guardian, the same documents have to be lodged with the application. However, as a matter of common practice, they are; and as a matter of good practice, they should be.

The test in this application

[14] The key concept for the appointment of a next friend or guardian is whether the relevant litigant is a "person under disability." Such a person cannot act without a next friend or guardian, as the case may be. Where the individual is not a minor, that will turn on whether the individual is by reason of mental disorder incapable of managing or administering his property and affairs. Plainly, in the context of litigation, the key issue will be whether the individual is capable of administering his legal affairs in the course of the litigation (by, for example, giving informed instructions to his or her lawyers, giving evidence, etc.).

[15] Order 80, rule 3(4) refers to a party in the proceedings becoming a *patient.* In context, that must mean someone suffering (or appearing to suffer) from a mental disorder in circumstances where this leads to them being under a disability. Where that is so, an application *must* be made to the court for the appointment of a next friend or guardian. Whether such an application is made, the question for the court on such an application will not simply be whether the relevant party is a patient but whether they are a person under disability.

[16] In the present case, therefore, the question for me is whether the plaintiff is now someone who by reason of mental disorder is incapable of managing or administering his property and affairs. That involves an assessment of his capacity; and an assessment of whether his lack of capacity is by reason of mental disorder. There are various types of mental disorder under article 3 of the 1986 Order, with that phrase being widely defined. Mental illness and mental handicap (as they are further defined) are included; but so also is "any other disorder or disability of mind." "Mental illness" is fairly widely defined as meaning "a state of mind" which affects a person's thinking, perceiving, emotion or judgment, although this is qualified as one which affects those matters "to the extent that he requires care or medical treatment in his own interests or the interests of other persons."

The evidence in this case

[17] Mr McEwen's submissions focused on whether the court could be satisfied that the test for mental illness was satisfied in this case, particularly when the plaintiff's capacity issues were closely related to his physical health difficulties.

[18] There are three sources of evidence before me speaking to the issues on this application: material from the plaintiff's GP; a psychiatric report from Dr Ackermann; and affidavit evidence (and a certificate) from the plaintiff's solicitor, Mr Conway.

[19] Primarily, there is a report from Dr Abraham Michael Ackermann, Specialty Doctor in Psychiatry, who has recently interviewed the plaintiff (remotely) and has considered his GP notes and records, along with some of the pleadings. Mr Duncan plainly has a range of medical issues. Entries from the GP records viewed as significant by Dr Ackermann referred to depressive illness in 2013; suicidal feelings in 2025; family concern about dementia in June 2026 and discussion about medication in relation to mood/memory; fluctuating confusion and memory loss in July 2026; and hepatic encephalopathy (a brain dysfunction caused by liver failure) in August 2026.

[20] The history provided at Dr Ackermann's interview disclosed serious issues with the plaintiff's memory loss over the last 9 months; that functionally the plaintiff struggles with 'everything'; that he gets muddled when undertaking basic tasks; and that he stopped attending to household financial affairs some three years ago. He

cannot recall names. He is on several antidepressant medications for his mental health. Mr Duncan was able to speak to Dr Ackermann normally, although his speech was slow. The report notes, "No evidence of a formal thought disorder." Mr Duncan scored 12/26 for Mini-Mental State Examination, a bedside cognitive test, although sections were left out due to him being blind. Nonetheless, the score indicated "significant cognitive impairment."

[21] Dr Ackermann dealt specifically with capacity in relation to the present proceedings, which he discussed with the plaintiff. Mr Duncan said that his daughter (the proposed next friend) reads correspondence to him from his solicitor about the case but that he does not understand what is read to him. He had a very basic understanding of evidence and cross-examination but very significant issues with memory, including explaining the concept of cross-examination after Dr Ackermann had given him an explanation.

[22] Dr Ackermann's overall impression and conclusion were as follows:

> "Mr Duncan has a depressive illness with ongoing suicidal ideation. This appears to be chronic and his GP was aware per his notes. He also likely has had periods of delirium this past year when he has been physically unwell. One also gets the impression that he has an underlying dementing illness.
>
> He struggled to understand and recall basic aspects of the legal process and in relation to his own case. On the balance of probabilities, he lacks the capacity to instruct his legal team. I took on board that his cognition tends to fluctuate when he becomes physically [unwell] but this is occurring quite frequently."

[23] Mr Maxwell also took me to some relevant entries in Mr Duncan's GP notes and records. These were provided by the GP under cover of correspondence dated 18 September 2026 which indicated that *if* there was not sufficient information contained within the notes in relation to the plaintiff's ability to give evidence and be cross-examined at home, a capacity assessment by a psychiatrist may be required. This was later obtained from Dr Ackermann.

[24] The GP notes outline the most recent admission to hospital (from 28 August to 10 September 2026) with Mr Duncan presenting as drowsy after a fall. He was drowsy and confused. The Stroke Team felt the presentation was in keeping with hepatic encephalopathy. Mr Duncan had unresponsive episodes and associated confusion. Prior to this, I was directed to an entry of 10 July 2016 outlining that, since his last hospital admission, the plaintiff was "a bit more confused" and that this was "worse in these past couple of weeks." The comments include a suggestion of confusion with the cause unclear, potentially delirium or dementia, with a need to

rule out a metabolic or intracranial cause. The family were informed that if there was no identifiable cause, they may need to wait and see if the confusion persisted for 6 months, at which point a referral for dementia would be possible.

[25] I also have the benefit of an affidavit (and certificate, in the terms specified in Order 80, rule 3(6)(c)) from Mr Conway, Solicitor, who has had carriage of the action on the plaintiff's behalf since it commenced in 2023. He describes concerns about the plaintiff's ability to concentrate and engage with the litigation process, even if the opportunity was afforded to have his evidence taken on commission. He raised these issues with the plaintiff's family before engaging Dr Ackermann to report on capacity. He has deposed to his belief that the plaintiff is now a patient (but has no enduring power of attorney, nor has a controller been appointed).

Conclusion

[26] I am satisfied on the basis of Dr Ackermann's report that the plaintiff lacks capacity to manage or engage in these proceedings and is under a disability. The only issue is whether this is "by reason of mental disorder." I am satisfied that it is for the reasons briefly set out below.

[27] I agree with the observations of counsel at the hearing that Dr Ackermann's report could have dealt with this issue more explicitly. The report was addressed principally to the issue of capacity, rather than spelling out the precise nature of the reason giving rise to the incapacity. That is perhaps unsurprising since the letter of instruction (set out in the background section of Dr Ackermann's report) indicates that he was asked to undertake "a capacity test."

[28] In future, it would be of assistance if medical practitioners asked to provide evidence in support of such an application expressly address both the issue of capacity and whether (and, if so, how) the disability arises "by reason of mental disorder" as that phrase is defined in the 1986 Oder.

[29] Nonetheless, I am satisfied that the plaintiff is a patient, that is to say, a person suffering or appearing to suffer from mental disorder. As noted above, the definition of "mental disorder" for this purpose in article 3 of the 1986 Order is a wide one. I am also satisfied that a material cause of the incapacity in this case is a mental illness, that is a state of mind which affects the plaintiff's cognition ("thinking, perceiving, emotion or judgment") and which requires care or medical treatment in his own interests. The relevant treatment may be considered to be either the anti-depressant medication the plaintiff is prescribed and/or the other medication he is prescribed to treat or control his physical ailments which in turn give rise to delirium, confusion and/or encephalopathy. In this regard, I place weight on Dr Ackermann's diagnoses of depressive illness and underlying dementing illness. Alternatively, this case may fall within the catch-all definition of "other disorder or disability of mind" which is also included in the definition of

"mental disorder" but on which there was little focus in the submissions received in this case.

[30] There were no other concerns about the proposed next friend in this case. She has consented to act; there is no one otherwise already entitled to act under the 1986 Order; and there is no reason to believe that she has an interest in the cause or matter which is adverse to that of the plaintiff.

[31] For these reasons, I grant the application and appoint the plaintiff's daughter, Alison Duncan, to be his next friend in these proceedings. The order to this effect was made on the afternoon of 9 October 2026, with these written reasons following in deference to the arguments made by counsel on the application.