IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Michel A. Monnin
Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner

B E T W E E N :

LOLO LAURA JANE ECKERT	)	***J. A. Pollock***
	)	*for the Appellant*
(Applicant) Appellant	)	
	)	***R. M. Beamish***
- and -	)	*for the Respondent*
	)	
PAYTON JULIA CORK-ECKERT	)	*Appeal heard and*
	)	*Decision pronounced:*
(Respondent) Respondent	)	***October 2, 2018***

MAINELLA JA (for the Court):

[1] This is an appeal of a discretionary order directing the trial of two issues relating to which of the parties is entitled to a death benefit of approximately $200,000 payable under a life insurance policy owned by the late Kerry Eckert (the insured).

[2] The respondent is the daughter of the insured from his first marriage. The applicant is the insured's second wife. Under the terms of the separation agreement from the insured's first marriage, the respondent became the irrevocable beneficiary of the insured's life insurance policy. Many years later, the insured became gravely ill. About a month before he died, the insurance company received a beneficiary designation form supposedly recently signed by the respondent shortly after she turned 18 years old. According to that form, the respondent relinquished her beneficiary right and

consented to the insured changing the beneficiary of the policy to the applicant alone. The application judge concluded that the contradictory evidence as to why the change of beneficiaries occurred shortly before the death of the insured created a "cloud" as to whether the respondent actually signed and consented to the change in the beneficiary designation in favour of the applicant, despite the historic enmity between the parties.

[3] Before disposing of an application by directing a trial or trial of a particular issue or issues (see Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88, r 38.09(b)), an application judge must be satisfied that a factual dispute necessary to decide the application is substantial and that the nature of the dispute, and the respective strength of the evidence each side puts forward, is such that the dispute cannot be fairly resolved with confidence without the formalities of a trial (see *Janz et al v Janz et al*, 2016 MBCA 39 at para 49; *Heritage Electric Ltd et al v Sterling O & G International Corporation et al*, 2017 MBCA 85 at para 16; and *Virden Mainline Motor Products Limited v Murray et al*, 2018 MBCA 82 at para 20). The exercise of an application judge's discretion whether or not to order a trial in some form will be afforded deference on appeal absent a misdirection or a result so clearly wrong as to amount to an injustice (see *Garwood v Garwood Estate*, 2007 MBCA 160 at paras 37-39).

[4] In our view, the application judge took the necessary hard look at the evidence before directing a trial on the issues of whether the respondent signed and consented to the change in beneficiaries. We are satisfied that she directed herself correctly on the law and did not make a palpable and overriding error in concluding that there is a substantial dispute of fact on the entitlement to the insurance monies that requires a trial to resolve. In

circumstances such as here, we do not see how the direction of a trial is a result so clearly wrong as to amount to an injustice.

[5] In the result, the appeal is dismissed with costs.

Mainella JA

Monnin JA

Pfuetzner JA