

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Chief Justice Marianne Rivoalen  
Madam Justice Diana M. Cameron  
Madam Justice Anne M. E. Turner

***BETWEEN:***

<b><i>DENNITA CAMERON</i></b>	)	<b><i>S. R. McEachern and</i></b>
	)	<b><i>A. Bailey</i></b>
	)	<b><i>for the Appellant</i></b>
	)	
<i>(Applicant) Appellant</i>	)	<b><i>T. M. Keller and</i></b>
	)	<b><i>O. R. L. Park</i></b>
<i>- and -</i>	)	<b><i>for the Respondent</i></b>
	)	
<b><i>MICHELLE CAMERON</i></b>	)	<b><i>Appeal heard and</i></b>
	)	<b><i>Decision pronounced:</i></b>
<i>(Respondent) Respondent</i>	)	<b><i>February 6, 2026</i></b>
	)	
	)	<b><i>Written reasons:</i></b>
	)	<b><i>February 18, 2026</i></b>

**RIVOALEN CJM** (for the Court):

[1] Dennita Cameron (the applicant) appealed the order of a judge of the Court of King's Bench (the application judge) pronounced on April 8, 2025, and signed on July 21, 2025. The order relates to the property of the estate of Dennis Dale Cameron (Mr. Cameron), who died on July 31, 2020. He was the father of the applicant and the husband of Michelle Cameron (the respondent). The applicant is the stepdaughter of the respondent.

[2] It is agreed that, after suffering a cardiac arrest, Mr. Cameron became mentally and physically incapacitated between April 20, 2018, and July 31, 2020 (the period of incapacity).

[3] During the period of incapacity, the respondent and Mr. Cameron's parents had competing applications before the Court of King's Bench for an order of committee of Mr. Cameron's property under section 75(2) of *The Mental Health Act*, CCSM c M110. Prior to the matter being adjudicated, Mr. Cameron passed away. He did not leave a will.

[4] The respondent has not applied for letters of administration of the estate pursuant to rule 74 of the MB, *King's Bench Rules*, Man Reg 553/88, because she takes the position that there are no assets of the estate; the estate is insolvent.

[5] The applicant applied under *The Intestate Succession Act*, CCSM c I85, for relief as a beneficiary of the estate. She sought several orders, including an order:

- (1) declaring that the respondent held the assets and income of the estate pursuant to an express, constructive or resulting trust for the benefit of the applicant;
  - (2) disclosing the financial records of all business entities operated by Mr. Cameron from April 2018 to present;
  - (3) requiring the respondent to provide an accounting of Mr. Cameron's assets and debts from April 2018 to present;
- and

- (4) requiring the respondent to pass the accounts of the estate for the period of April 2018 to present.

[6] After reading the materials and considering the submissions of counsel, the application judge provided oral reasons and ordered that:

- (1) a trust relationship between Mr. Cameron and the respondent was not created during the period of incapacity;
- (2) the applicant was not entitled to an accounting of Mr. Cameron's assets and debts during the period of incapacity; and
- (3) the applicant was entitled to an accounting of Mr. Cameron's assets, monies received, disbursements and inventory of immovable and movable assets as of July 31, 2020 to present.

[7] The applicant appealed items 1 and 2 of the order.

[8] After reading the appeal materials and considering the oral submissions of counsel, we dismissed the appeal with costs, with reasons to follow. These are those reasons.

[9] The applicant argues that the application judge erred in fact and in law in two ways.

[10] First, she argues that the application judge erred when he determined that no trust relationship was created between the respondent and Mr. Cameron during the period of incapacity.

[11] If a trust relationship is found to exist between the respondent and Mr. Cameron during the period of incapacity, it follows that the applicant, as a beneficiary of the estate, is entitled to an accounting. The applicant argues that the application judge erred when he found that she was not entitled to an accounting from the respondent for her management of Mr. Cameron's financial affairs during the period of incapacity.

[12] The issues here raise questions of mixed fact and law. Questions of mixed fact and law are reviewed for palpable and overriding error, unless an extricable or severable legal error from the factual determination is evident, in which case, deference is not owed and the correctness standard applies (see *Housen v Nikolaisen*, 2002 SCC 33).

[13] There is no dispute that Mr. Cameron was an in-patient in a long-term care facility during the period of incapacity until he passed away. The respondent looked after all expenses arising from his care while continuing to spend time with him.

[14] The main authority relied upon by the applicant before the application judge, in support of the argument that a trust existed during the period of incapacity, was *VanDenBussche v VanDenbussche*, 2009 MBQB 308. That case recites well-established principles regarding trusts. It defines the three certainties that are required for an express trust to come into existence: (1) the language of the alleged settlor must be imperative, (2) the subject matter or trust property must be certain, and (3) the objects of the trust must be certain. If any one of these three certainties does not exist, the trust fails to come into existence (see *ibid* at para 10, quoting *Waters' Law of Trusts in Canada*, 3rd ed at ch 5.I).

[15] On the question of whether a trust relationship existed between the respondent and Mr. Cameron during the period of incapacity, we agree with the application judge that one did not.

[16] The affidavit evidence and transcripts of cross-examinations before the application judge do not support the creation of a trust relationship between the respondent and Mr. Cameron during the period of incapacity. Prior to his incapacity, Mr. Cameron had not expressly executed any form of trust document and no extrinsic evidence demonstrating his intentions was adduced to give rise to an implied trust.

[17] Before us, counsel for the applicant argues that the application judge erred when he did not find that a constructive trust arose in the circumstances. In fairness to the application judge, this had not been argued before him.

[18] A constructive trust is a vehicle of equity through which one person is required by operation of law—regardless of any intention—to hold certain property for the benefit of another. It is used primarily as a remedy that may be imposed at a court’s discretion where good conscience so requires. A proper equitable basis must exist before the courts will impress certain property with a remedial constructive trust. The cause of action of unjust enrichment may provide one such basis (i.e., if monetary damages are insufficient). Another basis for the imposition of a remedial constructive trust is when an applicant can point to a breach of a fiduciary duty (see CED 4th, *Trusts*, “Constructive Trusts” at § 19, “Resulting Trusts” at §26).

[19] By the time of Mr. Cameron’s incapacity, the respondent and Mr. Cameron had been married for almost nine years. It appears that most of their assets were jointly held and the respondent continued to run their

household, maintain Mr. Cameron's financial needs and provide emotional support for the two years before his death.

[20] The evidence on this record does not support the finding of a constructive trust. No fiduciary duty existed between the respondent and Mr. Cameron during the period of incapacity. No committee order of Mr. Cameron's property was pronounced. The relationship between the respondent and Mr. Cameron was that of wife and husband, not of trustee and beneficiary.

[21] It follows that the applicant is not entitled to an accounting from the respondent for her management of Mr. Cameron's financial affairs during the period of incapacity.

[22] We see no error in the application judge's findings.

[23] For these reasons, we dismissed the appeal with costs.

Rivoalen CJM

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Cameron JA

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Turner JA

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