FAMILY LAW COSTS Applicant to payfixed costs of estate and intervener Family Law Act 1975 (Cth) APPLICANT: Ms Banaszak RESPONDENT: Mr Peters and Mr J Mandia as personal representativesof the estate of Mr S Mandia INTERVENER: Mr H Mandia FILENUMBER: MLC 6072 of 2012 DATE DELIVERED: 12 August 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Cronin J HEARING DATE: 12 August 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Wraith SOLICITOR FOR THE APPLICANT: Mr B COUNSEL FOR THE RESPONDENT: Mr Strum SOLICITOR FOR THE RESPONDENT: Kenna Teasdale COUNSEL FOR THE INTERVENER: Ms Williams SOLICITOR FOR THE INTERVENER: Marshalls & Dent ORDERS (1) ThatBY CONSENT there be orders in accordance with the minutes of proposedorders marked Exhibit A sealed and attached hereto AND IT ISDIRECTED that such minutes remain upon the Court file. (2) That the solicitor for the respondent estate engross the minutes and deliverthem by electronic transmission to my Associatewithin 7 days. (3) That the applicant pay the costs of the respondent estate fixed in the sumof $7090 and the costs of the intervener of $6380with a stay of the payment of45 days from this day. (4) That the reasons in respect of the costs order be transcribed and be placedon the court file. (5) ALL APPLICATIONS ARE ADJOURNED AND FIXED FOR FINAL HEARING before theHonourable Justice Cronin as the 2nd case in the monthly listcommencing on 24 November 2014 not to be called before 10 am on 26November 2014 as a three day matter. (6) The evidence in chief of all witnesses shall be given byaffidavit. TIMETABLE: (7) By 4 pm on 16 September 2014 the applicant file and serve upon allother parties: (a) an amendedapplication setting out with precision the orders to be sought; (b) allaffidavits of evidence to be relied upon; and (c) a financialstatement. (8) The applicant pay all required court fees by 4 pm on 16 September2014. (9) By 4 pm on 30 September 2014 the respondent file and serve upon allother parties: (a) an amendedresponse setting out with precision the orders to be sought; (b) allaffidavits of evidence to be relied upon; and (c) a financialstatement. (10) By 4 pm on 7 October 2014 the intervener file and serve upon allother parties: (a) an amendedresponse setting out with precision the orders to be sought; and (b) allaffidavits of evidence to be relied upon (11) By 4 pm on 21 October 2014 the applicant file and serve anyaffidavit

in reply. (12) Without leave of the Court, any affidavit filed beyond the timetable setout in these orders may not be relied upon. (13) All parties have leave to issue subpoenae for the production of documents.If a party is represented by a legal practitioner,the registrar shall, upon thecertification of the legal practitioner, be satisfied as torelevance. CASE MANAGEMENT (14) The registrar may vary the filing timetable under these orders. (15) If a party fails to comply with these orders, a party who has complied mayfile an application in a case supported by an affidavitseeking to proceed on anundefended basis. (16) Any rulings required on objections to evidence shall be set out in the caseoutline. (17) By 4 pm on 24 November 2014 all parties file electronically to ... a caseoutline in one document setting out: (a) a conciseset of orders to be sought; (b) the list ofthe affidavits to be read; (c) the list ofobjections to evidence requiring a ruling; (d) the outlineof the issues in dispute; and (e) a list ofassets and liabilities. COSTS (18) At the commencement of the hearing, each party shall provide the court witha statement setting out their costs incurred tothat date, the source of anypayments made and what costs are expected until the completion of thehearing. IT IS NOTED that publication of thisjudgment by this Court under the pseudonym Banaszak & Executors of theEstate of Mr S Mandia and Anor (No. 2) has been approved by the ChiefJustice pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT MELBOURNE FILE NUMBER:MLC 6072 of 2014 Ms Banaszak Applicant And Mr Peters and Mr Mr J Mandia as personalrepresentatives of the estate of Mr S Mandia Respondent And Mr H Mandia Intervener REASONS FOR JUDGMENT Section117 of the Family Law Act 1975 (Cth) (the Act) providesthat in proceedings under the Act, each party to the proceeding should beartheir own costs,unless there are circumstances evident that justify departurefrom that principle. Despite having a justifiable circumstance, thecourt isstill obliged if it is contemplating an order to look at thematters set out in s 117(2A) of the Act. The first question in this case iswhether or not there is a justifiable ground to depart from the principle. Boththe respondent estate and the intervener seek costs for both the hearing todayand the hearing on 18 July. Simplyput, the 18 July hearing came about because of a conversation in early Julybetween the applicant and her solicitor, whichseems on the evidence ofMr B to have arisen out of the fact that he wanted funding for theproceedings. This casehad been

before me and was listed for trial at a hearingon 19 May, at which time the applicant was represented by senior and juniorcounsel. For whatever reason, the issue of the preparation for the trial seemsto have only really become the focus of the applicantssolicitor in Julywhen it was only days away from the timetable obligation being required to bemet. Ithas been submitted that there were other problems, including the valuation of aproperty and also a discovery issue. I am notconcerned about the discoveryissue because it was certainly not an issue in May and on any view, this casewas to proceed to finalisationaccording to the timetable. The valuation issueis a bit more of a vexed issue but the reality is that it is a property claimedby the intervener. The issue was that Mr B was concerned about what his clientwas saying and he professionally, and I think quiteproperly, decided that hecould not continue to take instructions, particularly when he knew that only aday or so later, there wasa psychiatric examination of her to take place. Asit now transpires, the psychiatrist has indicated that the applicant was quitewell when he saw her only a couple of days later. AsI pointed out, orders for costs in this jurisdiction, if they are to be made,are not by way of a punishment; they are by wayof compensating a party who wasan unwilling participant in proceedings. Both the respondent estate and theintervener are unwillingparties and indeed were both keen to have the hearingoccur and conclude. What happened on 18 July was that the proceedings lookedremarkably like they were not going to be able to proceed. What was thencanvassed was the issue of whether or not a case guardianwould be sought forthe applicant. I refused to have the trial vacated until such time as it becameclear, just exactly whetherthe applicant would need a case guardian. This hasall come about both on 18 July and today as a result of whatoccurred in early July by the conduct of the applicant. As I said, it is notdesigned to be punishing her or even being criticalof her; it is simply a factof life that the other parties had to participate in the proceedingsunnecessarily. Therefore,there is a justifiable reason to depart from the principle that each party paystheir own costs. It is said by the applicantthat to the extent that thequestion of costs should be contemplated at all, the issue should be reserved tothe trial date. Thedilemma with that is that apart from the usualproblem of it getting lost in the process it means that the courthas tolook retrospectively at what occurred on 18 July and today. In my view, that isnot

appropriate in this particular case whenI have a very clear picture of whathas occurred. Thereare certainly unresolved issues associated with discovery. Certainly, therespondent estate has indicated non-compliance. No doubt that issue can bedealt with at trial if that is not correct. There is a justifiable circumstanceto make an order. Iturn to the provisions in s 117(2A). As I have pointedout, the first step is to look at the financial circumstances of each of theparties. The estate clearly is ina trust position so its circumstances are notparticularly relevant. I was told on a previous occasion that the applicant hasa propertyin excess of a million dollars, although not by much, and isotherwise pursuing what Senior Counsel described as about 25 per cent. On anybasis, I could not find that she is impecunious. I have already indicated myviews about her conduct in the proceedings,particularly as it relates to thecompliance with court orders. There are no Legal Aid considerations here. Itseems to me on any view, the parties the respondents and the intervener are out of pocket. There is no disputeas to the quantum of the costs. On that basis, I propose to make an order that the applicant pay the costs ofthe estate of $7090and the intervener of $6350. I certify thatthe preceding seven (7) paragraphs are a true copy of the reasons for judgmentof the Honourable Justice Cronin deliveredon 12 August2014. Associate: Date: 15 October 2014