FAMILY LAW Casemanagement. Issue about availability and replacement of a single expert. Concern expressed by a party thatthe witness may have had involvement with oneparty. Family Law Act 1975 (Cth) Fagenblat & Feingold PartnersProprietary Limited [2001] VSC 454 APPLICANT: Mr SCVG RESPONDENT: Ms KLD INDEPENDENT CHILDRENS LAWYER FILENUMBER: SYC 4380 of 2008 DATE DELIVERED: 15 August 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Cronin J HEARING DATE: 15 August 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr J Dowd SOLICITOR FOR THE APPLICANT: Watts McCray Lawyers COUNSEL FOR THE RESPONDENT: Mr Macphillamy SOLICITOR FOR THE RESPONDENT: Macphillamys SOLICITOR FOR THE INDEPENDENT CHILDRENS LAWYER: Ms Yeend, Yeend & Associates ORDERS Thatthe previous order for the appointment of Dr H and the requirement of theparties to attend upon him is discharged. Thatpursuant to s 62G(2) of the Family Law Act 1975 (Cth) the parties attendupon and at the direction of Dr E for the purposes of a psychiatric examinationand if necessary, the preparationof a family report. ThatDr E may require any party to attend with, or bring in, a child whose interestmay be affected by the proceedings. ThatDr E note the terms of reference relating to the previous order relating to theattendance on Dr H. Thatthe parties have general liberty to apply. IT IS NOTEDthat publication of this judgment by this Court under the pseudonym SCVG& KLD has been approved by the Chief Justice pursuant to s 121(9)(g) ofthe Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT MELBOURNE FILE NUMBER: SYC 4380 of 2008 Mr SCVG Applicant And Ms KLD Respondent Independent Childrens Lawyer REASONS FOR JUDGMENT Inthis particular application, the matter is listed for trial shortly. An orderwas made, not by me, for the appointment of a psychiatrist. The terms of theappointment and examination were, apparently, agreed. As a result of me havingbeen asked to hear this trial,I have set the timetable and the expert that wasproposed and, apparently, agreed, cannot meet the timetable. Thisis a case, from what I have read, which has a limited issue and needs to beheard reasonably soon. The dispute here is relativelysimple. The IndependentChildrens Lawyer who has come on the record and who was not a party tothe appointment of the previousexpert, has now proffered another person who isavailable and the father agrees to that appointment but the mother

has threegroundsfor resisting it. Those three grounds are that at a hearing before theDeputy Chief Justice, a statement was made by counsel forthe father that thefather had seen the proposed expert. That has been to some extent resolved by astatement that what was saidwas incorrect. There is absolutely nothing thatwould indicate that the proposed witness, Dr E, has indeed had anything to dowiththe father. To the extent that that is incorrect, it seems to me that itcould always be tested in cross-examination or by a requestof the witness toproduce his notes and any other administrative records. Thesecond issue is that, to some extent, connected with the first, thefathers lawyers have sent a letter which has a referenceindicating apreference for Dr E as a shadow expert. Mr Dowd quite properly says today, thatthat may very well have been his terminologyrather than it being correctlydescribed. Again, I think, that is connected with the first issue. Thethird issue is that the material that I have ordered to be filed under thetimetable, will not be filed prior to the expert commencingthe consultation andexamination and whilst I have made my position clear that I much prefer theexpert to have the trial material,I do not think that is an insurmountablematter. Thereis an issue therefore about whether the proposed expert is biased. As Pagone Jin the Supreme Court of Victoria said in Fagenblat & Feingold PartnersProprietary Limited [2001] VSC 454: A biased witness does not impugn the independence of the decision-maker nor, infact, does it infect the impartiality of the Court. The opposing party is clearly at liberty to test whether there is any bias orcorruption of the evidence and at that particular point,if the evidence is,indeed, corrupted by the bias, it becomes either inadmissible or, perhaps, byvirtue of s 65G(8), of little weight. Iwant to put on the record that I clearly understand there is a sense ofapprehension, if not, grievance, on the part of the motherbut in my view, thatissue can not only be ameliorated by giving her the opportunity to test theevidence including, as I have said,in relation to the issue of partiality, butalso if indeed the report is made available prior to the trial commencing then,the motherhas an opportunity to seek her own shadow expert if she so desires. Whether she will be successful in that, obviously, depends onthe materialbecause of the nature of the Family Law Rules 2004. Chapter15.45 of the Family Law Rules provides that a Court can appoint an expert ofthis nature of its own initiative. It seems to me that whether this wasinitiatedby the Court or by the parties is somewhat immaterial now because itwas

always understood that there was going to be this report. It seems to me,in the circumstances, that there is no harm done by the material that I haveheard and to the extent that thereis a problem, no doubt the mother will havean opportunity to test that evidence. ORDERS DELIVERED I certify that the preceding seven (7)paragraphs are a true copy of the reasons for judgment of the Honourable JusticeCronin deliveredon 15 August 2014. Associate: Date: 21October 2014 AustLII:Copyright Policy|Disclaimers|Privacy Policy|Feedback URL: http://www.austlii.edu.au/au/cases/cth/FamCA/2014/898.html