

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D19395
G/kmg

_____AD3d_____

Argued - April 28, 2008

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2007-05780

DECISION & ORDER

In the Matter of Robert Joseph Bonnilla, appellant,
v Carrie Ann McCuen, respondent.
(Proceeding No. 1)

In the Matter of Carrie Ann McCuen, respondent,
v Robert Joseph Bonnilla, appellant.
(Proceeding No. 2)

(Docket Nos. V-18834-06, V-18835-06, V-18836-06,
V-2431-07, V-2432-07, V-2433-07)

Mayer, Ross & Hagan, P.C., Patchogue, N.Y. (Robert W. Mayer and Christopher R. Ross of counsel), for appellant.

O'Rourke & Hansen, PLLC, Hauppauge, N.Y. (James J. O'Rourke of counsel), for respondent.

Robert C. Mitchell, Riverhead, N.Y. (Amy E. King of counsel), attorney for the children.

In related child custody and visitation proceedings pursuant to Family Court Act article 6, the father appeals from an order of the Family Court, Suffolk County (Snellenburg, J.H.O.), dated May 11, 2007, which, after a hearing, and upon granting his petition for visitation subject to compliance with a certain condition, granted that branch of the mother's cross petition which was for permission to relocate to North Carolina with the parties' children.

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ORDERED that the order is modified, on the law and the facts, by deleting the provision thereof conditioning the father's visitation with the children upon his good-faith attempt to reduce both his child support arrears and a money judgment in favor of the Suffolk County Department of Social Services; as so modified, the order is affirmed, without costs or disbursements, and the matter is remitted to the Family Court, Suffolk County, for a determination of an appropriate post-relocation visitation schedule for the father.

Contrary to the father's contention, after weighing the appropriate factors set forth in *Matter of Tropea v Tropea* (87 NY2d 727), the Family Court properly found that it was in the children's best interest to permit relocation to North Carolina with the mother (*see Matter of Treadwell v Treadwell*, 32 AD3d 522; *Matter of Kaplan v Kaplan*, 21 AD3d 993, 995). The court erred, however, in conditioning the father's right to visitation with the children upon his good-faith attempt to reduce his child support arrears and a money judgment in favor of the Suffolk County Department of Social Services (*see Matter of Resignato v Resignato*, 213 AD2d 616, 617; *Engrassia v Di Lullo*, 89 AD2d 957). Accordingly, the matter must be remitted to the Family Court, Suffolk County, for a determination of an appropriate post-relocation visitation schedule for the father.

RIVERA, J.P., COVELLO, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court