

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

D25042
G/nl

_____AD3d_____

Argued - October 13, 2009

MARK C. DILLON, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2008-11095

DECISION & ORDER

In the Matter of Erin Vialardi, respondent,
v Robert Vialardi, appellant.
(Proceeding No. 1)

In the Matter of Robert Vialardi, appellant,
v Erin Vialardi, respondent.
(Proceeding No. 2)

(Docket Nos. V-6542-07, V-7118-07)

Berman Bavero Frucco & Gouz, P.C., White Plains, N.Y. (Ronald J. Bavero and Howard Leitner of counsel), for appellant.

Miano & Colangelo, Harrison, N.Y. (Joseph R. Miano of counsel), for respondent.

George E. Reed, Jr., White Plains, N.Y., attorney for the child.

In related child custody proceedings pursuant to Family Court Act article 6, the father appeals, as limited by his brief, from so much of an order of the Family Court, Westchester County (Klein, J.), dated November 25, 2008, as, after a hearing, awarded the mother final decision-making authority for the subject child.

ORDERED that the order is modified, on the law, on the facts, and in the exercise of discretion, by adding a provision thereto providing that the mother must consult with the father prior to exercising her final decision-making authority for the subject child; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

November 17, 2009

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MATTER OF VIALARDI v VIALARDI

While a custody award is a matter within the discretion of the trial court, whose determination is entitled to great weight on appeal (*see Eschbach v Eschbach*, 56 NY2d 167, 173; *Matter of Waldron v Dussek*, 48 AD3d 471), here, the court should have directed that the mother consult with the father with respect to any issues involving the child's health, medical care, education, religion, and general welfare prior to exercising her final decision-making authority for the subject child.

DILLON, J.P., MILLER, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court