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At a Term of the Supreme Court,
Part 48, of the State of New York
County of Nassau, held at 262
Old County Road, Mineola,
New York, on the 5th day
of March, 2010.

P R E S E N T: HON. NORMAN ST. GEORGE, A.S.C.J.

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In the Matter of a Custody/Visitation Proceeding

V-00390-09
V-00391-09

GEORGE CAVALLARO,

Petitioner,

**AMENDED
FINAL CUSTODY AND
VISITATION ORDER**

- against -

MARIA PENA,

Respondent.

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MARIA PENA,

Petitioner,

V-00389-09
V-00388-09

-against-

GEORGE CAVALLARO,

Respondent.

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This Court conducted a trial with respect to the above-entitled matters regarding the custody and visitation of the minor children herein, Giancarlo Cavallero (Date of Birth 8/3/99), and Jordy B. Cavallero (Date of Birth 7/3/04), hereinafter referred to as "the minor children." The trial commenced on 3/1/10 and concluded on 3/3/10. George Cavallaro, hereinafter referred to as "Petitioner-father," appeared in person and was represented by his attorney, Ngozi R. Asonye, Esq. Maria Pena, hereinafter referred to as "Respondent-mother," appeared in person and was represented by her attorneys, Dominic Barbara, Esq., and Cindy A. Prusinowski, Esq. The minor children were represented by their Law Guardian, Joseph Abbenda, Esq. Five witnesses were called during the

trial. The Petitioner-father testified on his own behalf, and called Randi Mani and Diane Cikoski. The Respondent-mother testified on her own behalf and call Dr. John T. McCann, a Forensic Psychologist, who prepared a Forensic Custody and Visitation Evaluation for the Court. The Court conducted an in-camera interview with the minor-children and the Law Guardian

Petitioner-father seeks primary residential custody of the minor children. Petitioner-father consents to liberal visitation by Respondent-mother. Respondent-mother seeks primary residential custody of the minor children. Respondent-mother consents to supervised visitation with a monitor by Petitioner-father. Mr. Abbenda did not make a recommendation regarding custody or visitation.

After hearing the trial testimony, reviewing all of the evidence, and evaluating all of the facts and circumstances regarding this matter, this Court makes the following findings:

The Court found that the testimony of Petitioner-father was not credible. Petitioner-father was extremely combative, evasive, and vague on the stand. Petitioner-father was consistently unable to follow simple Court directives regarding his conduct, demeanor and decorum during the proceedings. Petitioner-father was unable to provide verifiable employment. Petitioner-father has no current source of transportation since his vehicle was recently repossessed and the home that he is currently residing in is in foreclosure. It is this Court's opinion that Petitioner-father has provided and will provide a home life for the minor children which is hectic, and financially unstable. Further, Petitioner-father has immersed the minor children in a lifestyle that is solely and exclusively centered around tennis. This Court finds that the daily schedule of the minor children is overly burdensome, exhausting and completely unacceptable. At the tender ages of five and ten years old, the minor children are required to begin their day at 6:00 a.m., they are driven an hour and a half from their home in West Hempstead, Nassau County, to a school in Brewster. The transportation of the minor

children is accomplished by various people since the Petitioner-father no longer has an automobile to drive them. The minor children attend school classes from 8:30 a.m. to 1:00 p.m. and then are taken out of school, effectively missing a number of classes, and are transported to nearby tennis facility in Brewster to attend a six hour tennis program. The minor children are picked up from the tennis facility on average between 8:00 p.m. and 8:30 p.m. and arrive back home between 9:30 p.m. and 10:00 p.m. This schedule is followed at least five days per week. On weekends, the minor children are involved in tennis school and/or tournaments. This Court finds that the Petitioner-father has displayed poor decision making regarding his minor children in continuing with this grueling daily schedule despite the fact that the children are constantly tired, regularly late to school, their school work is suffering, and their tennis appears to be negatively impacted.

This Court found the testimony of Respondent-mother to be credible. Respondent-mother was open and expansive when testifying. Respondent-mother has a stable job and has provided a stable home environment for the minor children. This Court finds that the Respondent-mother has and will provide the minor children with a more reasonable and rounded childhood than the Petitioner-father.

This Court accepts the findings of Dr. John T. McCann, as outlined in his Forensic Evaluation report which was admitted into evidence.

Accordingly, in light of the forgoing, it is hereby:

ORDERED, that the Respondent-mother is hereby granted sole physical, legal and residential custody of Giancarlo Cavallero (D.O.B.: 8/3/99), and Jordy Cavallero (D.O.B. 7/3/04); and it is further

ORDERED, that the Respondent-mother and Petitioner-father shall have joint decision making authority over the minor children in all matters excluding education; however, Respondent-mother shall have final decision making authority over all matters concerning the minor children; and it is further

ORDERED, that the Respondent-mother shall have sole decision making authority over all matters concerning the education of the minor children and the location of the school that they attend. In addition, the Respondent-mother shall have sole decision making authority over where the minor children will attend the balance of the current school year. However, the children must begin attending school immediately; and it is further

ORDERED, that Petitioner-father shall engage in and complete a sixteen session Anger Management program within six (6) months of the date of this order, and provide written proof, through his attorney, of same to this Court, to Respondent-mother's attorney, and to the Law Guardian. Until such time as the Petitioner-father has completed and provided proof of completion of said Anger Management program, Petitioner-father shall have the right to exercise supervised visitation with the minor children at least once per week through E.A.C., or any other visitation as agreed upon by the parties; and it is further

ORDERED, that provided the Petitioner-father has completed said Anger Management program and provided proof of same as set forth in this Order, Petitioner-father shall have the right to exercise unsupervised visitation with the minor children as follows:

REGULAR VISITATION:

a) The first and third weekend of each month from Friday at 5:00 p.m. until Sunday at 6:00 p.m., or any other alternate weekends as agreed to by the parties. The Petitioner-father shall pick up and drop off the minor children curbside at the residence of the Respondent-mother, or as otherwise agreed to by the parties.

b) The second and fourth Monday of each month from 4:30 p.m. until 7:30 p.m., or any other alternate Mondays as agreed to by the parties.

c) If the Petitioner-father cannot exercise the aforesaid visitation, he will give twenty-four (24) hours notice to the Respondent-mother and said visitation shall be waived, unless otherwise agreed to by the parties.

d) In the event that either party is running late for any scheduled pick up or drop off, they shall immediately notify the other party. In no event shall either party be more than thirty minutes late for any scheduled pick up or drop off. If the Petitioner-father is more than thirty minutes late for a scheduled pick up, visitation for that entire block of visitation shall be waived, unless otherwise agreed to by the parties. If the Petitioner-father is more than thirty minutes late for a drop off, then his subsequent visitation will be reduced by the amount of time that he was late for the drop off. If the Respondent-mother is more than thirty minutes late for a drop off, then the Petitioner-father's visitation time for that visitation shall be increased by the amount of time that the Respondent-mother was late. If the Respondent-mother is more than thirty minutes late for a pick up, then the Petitioner-father's visitation time for the next scheduled visitation shall be increased by the amount of time that the Respondent-mother was late for the pick up.

e) In the event of illness of either one or both of the minor children, the Respondent-mother may cancel the visitation, regarding the sick minor child(ren), upon giving twenty-four (24) hours notice to the Petitioner-father, with a specific explanation of the illness and the reason that the visitation can not occur. Said cancelled visitation shall be rescheduled at a time mutually agreed to by the parties.

HOLIDAY VISITATION:

f) Holiday Visitation shall be from 10:00 a.m. until 8:00 p.m. as follows:

| <u>HOLIDAY</u> | <u>EVEN YEARS</u> | <u>ODD YEARS</u> |
|--|-------------------|------------------|
| President's Day | Father | Mother |
| Memorial Day | Mother | Father |
| Fourth of July | Father | Mother |
| Labor Day | Mother | Father |
| Columbus Day | Father | Mother |
| Thanksgiving Day | Mother | Father |
| Christmas Eve (from 4:00 P.M. to 12 noon on Christmas Day | Mother | Father |
| Christmas Day (from 12 noon to 8:00 P.M.) | Father | Mother |
| Mother's Day | Mother | Mother |
| Mother's Birthday | Mother | Mother |
| Father's Day | Father | Father |

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|---------------------|--------|--------|
| Father's Birthday | Father | Father |
| Children's Birthday | Father | Mother |
| Easter Sunday | Mother | Father |
| Any Other Holidays | Father | Mother |

g) Holiday Visitation shall be considered a single day event and shall take priority over Regular Visitation and School Vacation Visitation, for that day only, unless otherwise agreed to by the parties.

h) Father's Day, Mother's Day, each Parent's Birthday, and the minor children's Birthdays, shall take precedence over any other Visitation, for that day only. Both parties shall make certain that their visitation during these times will not interfere with any of the minor children's important commitments which may fall on these days.

SCHOOL RECESS VISITATION:

i) School Recess Visitation shall commence at 6:00 p.m. on the last day of school immediately preceding such School Recess and terminating at 8:00 p.m. on the last day of the School Recess period as follows:

| | <u>EVEN YEARS</u> | <u>ODD YEARS</u> |
|---------------------------------|-------------------|------------------|
| Spring Recess | Mother | Father |
| Thanksgiving Recess | Mother | Father |
| December/January Holiday Recess | Father | Mother |
| Winter/February Recess | Father | Mother |

j) School Recess Visitation shall take precedence over Regular Visitation. School Recess Visitation shall not take precedence over Holiday Visitation, for that day only, unless otherwise agreed to by the parties.

SUMMER VACATION VISITATION:

k) Each Party shall have two contiguous uninterrupted weeks of Summer Vacation Visitation with the minor children, in either July or August. The Petitioner-father shall submit his selected two weeks, in writing, to the Respondent-mother no later than April 15th of each year. Respondent-mother shall submit her selected two weeks, in writing, to the Petitioner-father no later than May 1st of each year. The Summer Vacation Visitation selection shall be binding upon the Petitioner-father and Respondent-mother, unless otherwise agreed to by the parties. If Petitioner-father does not submit his selected two weeks to Respondent-mother by April 15th, then Respondent-mother may first choose her Summer Vacation Visitation with the minor children. Summer Vacation Visitation weeks shall take precedence over all other Visitation, with the exception of required summer school remedial education.

ORDERED, that the Respondent-mother and Petitioner-father shall make every effort to maintain access and contact between the minor children and the other parent. Both Respondent-mother and Petitioner-father may telephone the minor children when they are in the other parent's care between 7:00 p.m. and 7:30 p.m. every evening; or at a time otherwise agreed to by the parties; and it is further

ORDERED, that neither Respondent-mother nor Petitioner-father shall make disparaging remarks about the other in the presence of the minor children. Neither parent shall discuss any issues pertaining to this action or any divorce action with the minor children; and it is further

ORDERED, that both Respondent-mother and Petitioner-father shall advise the other regarding all major issues concerning the minor children, including but not limited to the health, education, welfare, extra curricular and other religious activities. If either parent has knowledge of any illness, accident, or other circumstances seriously affecting the minor children's health or well-being, they will immediately notify the other parent. Respondent-mother and Petitioner-father shall be entitled to contact and obtain information from physicians, dentists, mental health professionals, or any other health care providers of the minor children; and it is further

ORDERED, that the Respondent-mother and Petitioner-father shall be entitled to contact and obtain information from any teacher, substitute teacher, teacher's aide, school or other educational provider of the minor children. Both Respondent-mother and Petitioner-father shall be notified of all school events including but not limited to performances, ceremonies, parent/teacher conferences, and open house school events. Both Respondent-mother and Petitioner-father shall have the right to attend any and all school related events and extracurricular activities; and it is further

ORDERED, that Respondent-mother and Petitioner-father shall separately engage in and complete a parenting course within six (6) months of the date of this order, and provide written proof of same to this Court through their attorneys; and it is further

ORDERED, that neither Respondent-mother nor Petitioner-father shall arbitrarily withhold access to the minor children as provided for in this agreement; and it is further

ORDERED, that both Respondent-mother and Petitioner-father shall keep the other advised of the whereabouts of the minor children; and it is further

ORDERED, that both Respondent-mother and Petitioner-father shall keep the other advised of their current telephone numbers, addresses, and any other pertinent contact information; and it is further

ORDERED, that the Petitioner-father shall not be permitted take the minor children outside of the United States unless agreed to by Respondent-mother, and for no longer than two weeks; and it is further

ORDERED, that the Respondent-mother shall not be permitted take the minor children outside of the United States for a period exceeding two weeks; and it is further

ORDERED, that the Respondent-mother shall not leave the minor children for any overnight visits with any relatives unless Respondent-mother is present for the entire night; and it is further

ORDERED, that the passports of the minor children shall be kept by the Respondent-mother who shall have the sole right to renew same; and it is further

ORDERED, that the passports of the parties herein are being returned by the Court forthwith.

This constitutes the opinion, decision and Order of the Court.

ENTER:

A handwritten signature in black ink, appearing to read 'N. St. George', written over a horizontal line.

Hon. Norman St. George
Acting Supreme Court Justice

RECORDED - 10/10/10