232 A.D.2d 214
Supreme Court, Appellate Division,
First Department, New York.

Linda EDGERLY, Plaintiff–Appellant–Respondent,
v.
Loyd C. MOORE, Defendant–
Respondent–Appellant.

Oct. 8, 1996.

Appeal was taken from order of the Supreme Court, New York County, Saxe, J., awarding custody of parties' child to mother, granting visitation rights to father, and prohibiting mother from relocating during child's minority. The Supreme Court, Appellate Division, held that: (1) alternate weekly visitation scheduled to be put into effect shortly before child turned eight did not interfere with mother's rights as child's custodian, and (2) restriction placed on mother's right to relocate was appropriate to assure visitation.

Affirmed.

Attorneys and Law Firms

**774 Howard W. Yagerman, for Plaintiff–Appellant–Respondent.

Peter Bienstock, for Defendant–Respondent–Appellant.

Before ROSENBERGER, J.P., and ELLERIN, WILLIAMS, MAZZARELLI and ANDRIAS, JJ.

Opinion

MEMORANDUM DECISION.

*214 Order, Supreme *215 Court, New York County (David Saxe, J.), entered on or about February 1, 1996, as supplemented by the order entered on or about February 2, 1996, which granted plaintiff wife's motion to confirm the Special Referee's report as to child support but denied it as to custody and visitation, and, upon an independent review of the evidence, awarded custody of the parties' child to the wife, granted extensive visitation rights to defendant husband, and prohibited the wife from relocating out of her Manhattan neighborhood during the child's minority without the prior consent of the court or the husband, unanimously modified, on the law, to make the award of child support retroactive to March 13, 1995, pursuant to the parties' stipulation, and otherwise affirmed, without costs.

[1] [2] According the IAS court's findings of fact the "greatest respect" (*Eschbach v. Eschbach,* 56 N.Y.2d 167, 173–174, 451 N.Y.S.2d 658, 436 N.E.2d 1260), we find that the record supports an award of custody to the mother as in the best interests of the child. While the views of independent experts are entitled to weight, they do not take precedence over the judgment of the Trial Judge (*Chait v. Chait,* 215 A.D.2d 238, 638 N.Y.S.2d 426), especially where, as here, the concern underlying the expert's recommendation was factually faulty (*compare, Rentschler v. Rentschler,* 204 A.D.2d 60, 611 N.Y.S.2d 523, *lv. dismissed* 84 N.Y.2d 1027, 623 N.Y.S.2d 182, 647 N.E.2d 454). We also agree with a visitation schedule that recognizes that this is a case where the best interests of the child lie in being nurtured by both parents (*see, Hemphill v. Hemphill,* 169 A.D.2d 29, 32, 572 N.Y.S.2d 689, *app. dismissed* 78 N.Y.2d 1070, 576 N.Y.S.2d 216, 582 N.E.2d 599), and disagree with the wife that the alternate weekly schedule to be put into effect shortly before the child turns eight will interfere with her rights as the child's custodian (*compare, Matter of George W.S. v. Donna S.,* 199 A.D.2d 272, 604 N.Y.S.2d 583).

[3] The restriction on the wife's right to relocate is appropriate to assure such visitation (*see, Bluemke v. Bluemke,* 155 A.D.2d 574, 548 N.Y.S.2d 31, *lv. denied* 75 N.Y.2d 704, 552 N.Y.S.2d 109, 551 N.E.2d 602). Concerning the award of child support, the Special Referee's recommendation is contradictory, and we accordingly clarify that the award is retroactive to March 13, 1995, the date in the parties' stipulation concerning arrearages. We have considered the parties' other contentions for affirmative relief and find them to be without merit.

Parallel Citations

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