IN THE SUPREME COURT OF IOWA

KATIE VANDEWALKER a/k/a KATIE VENECHUK, Petitioner/Appellant, vs. GARY A. LANDHERR, Respondent/Appellee.	)	S.C. NO. 23-0826

APPEAL FROM
THE IOWA DISTRICT COURT FOR WORTH COUNTY
THE HONORABLE BLAKE H. NORMAN, JUDGE

APPELLANT'S REPLY BRIEF AND REQUEST FOR ORAL ARGUMENT

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Statement of the Case

The order currently under appeal is a modification of a custody decree, specifically of the terms relating to the minor child's school district, between Katie Vandewalker ("Katie"), Petitioner/Appellant, and Gary A. Landherr ("Gary"), Respondent/Appellee, concerning their child M.N.L., born 2013.

M.N.L.'s transportation is the first issue Gary takes up in his statement of the case as he states "[Katie's Motion for Emergency Declaratory Judgment] mistakes the transportation time from Riceville to St. Ansgar School District, indicating that M.N.L. will spend sixty to ninety minutes traveling to and from school regardless of the method of travel." (Appellee's Br.p.10.) However, Gary testified at trial that M.N.L.'s commute to school by way of the school bus is an hour long and that he previously had expressed frustration about the length of time M.N.L. spends on the bus to get to school in St. Ansgar. (Tr. 58:2-8, 100:16-22.)

In fact, Katie's motion stated M.N.L. commutes to school from Riceville about four days per week on the bus, which could equal a total of sixty to ninety minutes. (App. at 84 ¶10.) Additionally, Katie

testified when she can drive M.N.L. to St. Ansgar, the total commute one-way is twenty-five minutes. (Tr. 20:13-21.) She further testified that when riding the bus, from her getting M.N.L. to the bus stop and then the commute to school, totals around an hour and 10-15 minutes. (Tr. 20:22-21:15.) The testimony at trial was not clear as to how often Katie can take M.N.L. or how often M.N.L. must take the bus. However, for four days out of the typical five-day school week, M.N.L. must commute to school, totaling about sixteen to eighteen days a month, and her commute ranges from twenty-five to seventy-five minutes one way. Contrary to Gary's arguments, this significant commute time is only part of the reason as to why it is in M.N.L.'s best interest that she be allowed to transfer to the Riceville School District, but it contributes to and supports an overall modification, nevertheless.

Statement of the Facts

Gary claims his home is the only "stable" one M.N.L. has known throughout her lifetime. (Appellee's Br. p.16.) This statement is made in conjunction with the fact that after the parties ended their relationship, Katie moved out of their shared residence

and lived with different family members. (Tr. 37:13-18.) However, her move did not impact the court's determination that she should be awarded primary physical care of M.N.L. (App. at 18.) Had the court felt her moving was part of a larger, concerning pattern of behavior, that award likely would not have been made. Gary framing Katie's moving after the end of the relationship as anything other than her trying to figure out her permanent living situation after leaving the parties' home misrepresents the facts and circumstances of this case.

Gary also brings up Katie's oldest minor daughter, K.L., and attempts to claim this modification of M.N.L.'s school is solely because logistically it would be easier for Katie. However, Katie has articulated numerous reasons as to why a school district change is in M.N.L.'s best interest. This change is not only due to the transportation issues (twenty-five to seventy-five minute commute one way), but also due to M.N.L.'s desire to change schools, the better education she will receive in Riceville given the shortcomings of and concerns with her education in St. Ansgar, her desire to attend the same school as her sisters, as well as the ability for her

to bond with the community she where spends the majority of her life.

Still on the topic of K.L. and the education at St. Ansgar, Gary states there is no extrinsic proof that K.L.'s education was not adequate in St. Ansgar or that her education is better in Riceville. (Appellee's Br. p.21.) However, Katie testified that K.L.'s special needs were not being fully accommodated as education plans were not being honored nor carried out as K.L. needs or deserves. (Tr. 16:6-16.) As a child with Down syndrome, K.L. needs more from her educators and Katie testified St. Ansgar was not the right school for K.L. Katie further testified K.L. is doing much better at Riceville, and her specialized plans are being carried out in a way that translates to her academic success. (Tr. 16:13-20.) Gary, after having been close with K.L. at one point in her life, (Appellee's Br. p.16), and hearing Katie testify to the issues K.L. was having at St. Ansgar, does not require extrinsic evidence to corroborate Katie's story, a story that he is aware of, is consistent, and motivated by what is in K.L.'s best interest. Katie as a mother wants what is best for her children, and that means making decisions as to their

education where the current institution falls short. Katie attempts to do the same with M.N.L. in the face of her struggle with reading, writing, and unsatisfactory test scores which suggest M.N.L.'s education is not meeting her needs as it stands. (App. at 154, 160; Tr. 30:2-18.)

Throughout his brief, Gary attempts to state that Katie is "actively [resisting]" him spending more time with M.N.L. and relies on his journal entries found in Exhibit 248 page 1-6. At trial, the district court stated Exhibit 248 had "minimal relevance", (Tr. 78:15-22), given it was a one-sided account of various alleged instances. Additionally, many of the alleged events do not have documentation to support their occurrence and Gary was the only witness to discuss these alleged events at trial.

As to the issue of Gary alleging Katie is resisting his spending time with M.N.L., (Appellee's Br. p.21), the trial court in making its credibility determination found Katie was not motivated by a desire to "deprive [Gary] of his visitation since a change in school would not result in any visitation change for Gary." (App. at 105.)

Lastly, Katie requests this court to reject the last paragraph of the facts section in Gary's brief on page 36 as he cites to a portion of an exhibit that was not admitted at trial. The trial court admitted only pages 1 to 6 of Exhibit 248 (Tr. p.5, 78:15-22), thus Gary's citing to page 8 falls outside of the scope of the evidence that this court can consider as it is not part of the record. *See* Iowa R. App. P. 6.801 (detailing what constitutes the record on appeal); *see also Rasmussen v. Yentes*, 522 N.W.2d 844, 846 (Iowa Ct. App. 1994) ("Facts not properly presented to the court during the course of trial and not made a part of the record presented to this court will not be considered by this court on review."); *In re Marriage of Doss*, No. 20-0624, 2022 WL 108961, at *5 n.12 (Iowa Ct. App. Jan. 12, 2022).

Argument

The parties were awarded joint legal custody as to M.N.L. and Katie was awarded primary care. As Gary points out, Katie as the primary care parent has the right and responsibility to maintain a home for M.N.L. and provide for her routine care under 598.1(7). Both parties have the right to equal participation in decisions affecting a child's education under 598.1(2), but under *Matteson*,

Katie as the primary care parent has the right to decide M.N.L.'s residence and thus when the parties are unable to agree on the minor's school, the final say should be with the parent having primary physical care. Additionally, Katie has shown there has been a change in circumstance warranting M.N.L. to change schools and further shown that it is in her best interest to do so.

1. Standard of review and preservation of error.

Gary agrees with Katie that the proper standard of appellate review is de novo. (Appellee's Br. p.36.) Gary also agrees the issue was preserved by Katie (*Id.*), and thus there are sufficient grounds for her to bring her appeal.

2. The district court erred by declining to switch M.N.L.'s school.

Gary's brief points out there are different standards courts utilize when it is involved in an educational decision. (Appellee's Br. p.37-38.) Katie requests only to modify the provision in the parties' Stipulation in asking the court to change the child's school district. She is not requesting an educational determination that requires a modification of physical care. The standard then, as Gary

describes, is there is a change of circumstances warranting a school district change as well and that change is in M.N.L.'s best interest. (Appellee's Br. p.38.) M.N.L.'s best interest, as discussed in Katie's Brief (pages 2 through 33), would be served should she be allowed to change school districts.

Gary's brief cites cases where the court focuses mainly on the issues stemming from the transportation/commute/logistics component of a parent requesting their minor child change school districts. (Appellee's Br. 41-48, 50.) However, transportation is just one of many issues and reasons in the present case for the court to modify the parties Stipulation and change M.N.L.'s school district.

The cases cited discuss commutes for minor children that vary between twenty minutes to 2½ hours. Notably, the court in *Gaswint* upheld a finding that eliminating a minor child's thirty-minute commute to school was in the child's best interest. *Gaswint v. Robinson*, No. 12-2149, 2013 WL 4504879, at *5 (Iowa Ct. App. Aug. 21, 2013). M.N.L., when she is driven by a parent, has a twenty-five-minute commute and, when taking the bus, has the above-mentioned sixty to seventy-five minute commute. While only a

small factor as to why M.N.L. should be allowed to change school districts, a finding taking that into account is supported by the *Gaswint* analysis.

Additionally, most of the cases Gary cites involve parents who have joint legal *and joint physical custody*, a dynamic that drastically impacts how the courts look at disputes between parents regarding joint legal custodian decisions. Such cases include *Gould v. Alderin*, No. 22-0874, 2022 WL 16985434 (Iowa Ct. App. Nov. 17, 2022); *Collett v. Vogt*, No. 17-0986, 2018 WL 739333 (Iowa Ct. App. Feb. 7, 2018); *In re Marriage of Bakk*, No. 12-1936, 2013 WL 5962991 (Iowa Ct. App. Nov. 5, 2013); *In re Marriage of Laird*, No. 11-1434, 2012 WL 1449625 (Iowa Ct. App. Apr. 25, 2012); *In re Marriage of Koffman*, No. 11-0895, 2012 WL 469959 (Iowa Ct. App. Feb. 15, 2012); *Hemesath v. Bricker*, No. 09-1064, 2010 WL 446990 (Iowa Ct. App. Feb. 10, 2010); *Vogt v. Hermanson*, No. 17-0303, 2017 WL 2875697 (Iowa Ct. App. July 6, 2017); *see In re Marriage of Hansen*, 733 N.W.2d 683, 690-91 (Iowa 2007). Katie, having primary care of M.N.L., is not just *a* factor to consider, it is *the* factor that makes all the difference in this case. Parties having joint

physical care changes the court's approach and analysis as to school choice completely, and to the extent these cases do not pertain to the facts and issues of this case, they should be deemed irrelevant.

Gary cites five cases that are on point as the parties had a custodial arrangement similar to the one at hand. Of those five, two are not relevant nor applicable to the facts of this case as *Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson & Sanger, LLP*, 764 NW2d 534, 538 (Iowa 2009), is cited only to establish the court shall step in to resolve a dispute between joint legal custodians using the best-interest-of-the-child standard and further deals with a non-custodial mom attempting to get minor children's medical records. *In re Marriage of Frazier*, No. 22-0686, 2023 WL 4104024 (Iowa Ct. App. June 21, 2023) is a vaccination case, which again does not fit with the dispute at present and is relevant only to the extent it pertains to joint legal custody disputes.[1] The court here too should

[1] Further, *Frazier* has limited, if any, precedential value because the Iowa Supreme Court granted further review of the court of appeals opinion, which is still pending. (*See* Docket Record, No. 22-0686 – Order granting Fur. Rev., filed Aug. 18, 2023; Order submitting matter to Sup. Ct., filed Oct. 10, 2023).

give the aforementioned cases the proper weight in so far as they establish the guiding legal principles but do not guide the analysis as to the facts and issues of this case.

That leaves three cases cited that involve joint legal and a primary care parent. One such is *In re Marriage of Matteson*, No. 16-0401, 2017 WL 361999 (Iowa Ct. Jan. 24, 2017). Gary states *Matteson* and associated arguments that the physical care parent has the right to designate the school where a child will attend have been waived. That is wrong. This *entire* case has been about Katie, the primary care parent, wanting to modify and have the court designate where M.N.L. goes to school, and asks that it find Riceville schools are in M.N.L.'s best interest. The argument that a primary care parent should be able to use their right to establish a primary residence for the minor child and have that residence influence, if not decide, what school district the minor child should attend is central to this case and is so inherent that it could not have been waived.

Further, Gary attempts to frame *Matteson* as an "outlier" even though it remains good law, has not been overruled, and has

been cited by the Iowa Court of Appeals as recently as August 2021. *See Varner v. Conway*, No. 20-0143, 2021 WL 3661143, at *4 (Iowa Ct. App. Aug. 20, 2021). *Matteson* factually is on point as well, making it the case to guide the court now on this appeal. Gary additionally states *Matteson* expressly violates Iowa Code sections 598.1 and 598.41. As to section 598.1, there is no such violation given the court in making the statement cites *Hoffman* which states in being able to make that final determination, the physical care parent does not have unlimited authority, having such a decision be subject to judicial review based on well-established principles protecting the best interests of the child. *In re Marriage of Hoffman*, 867 N.W.2d 26, 33 (Iowa 2015).

As to 598.41(a), that section pertains to a court making a *joint physical care determination* and requiring the parents submit a proposed joint physical care parenting plan, which at this stage in the parties' case is wholly irrelevant and has never been required of the parties. Lastly in his attempt to discredit *Matteson*, Gary states courts have "specifically stated that a physical care parent cannot simply designate the school where a child attends as this is

an educational decision that needs to be made by the joint legal custodians or submitted to the court." (Appellee's Br. p.50.) Katie submitted this issue to the court when the parties could not agree, so this argument is unnecessary and explains why the parties have found themselves before the court now, but the issue with this statement is that it is made without any citations to support where the courts have specifically stated as such in a case with similar facts as those present here.

Matteson is a guiding decision that should be left to speak for itself and given its proper weight, especially considering Katie being able to show a material change in circumstances as it relates to M.N.L.'s school district and that such a change is in her best interest. Thus, Gary's attempts to discredit the decision and confuse the parties' physical care arrangement are without merit and unpersuasive. Even should the court find *Matteson* is not persuasive and definitive, Katie has been able to show there has been a substantial change in circumstances warranting a change in school district and has shown that doing so is in M.N.L.'s best interests.

The two other cases cited that appear to have the same custodial arrangement between Katie and Gary as to M.N.L., *In re Marriage of Comstock* and *Gaswint v. Robinson*, which both agree Katie must show there has been a material change in circumstances and that a modification of the school district is in M.N.L.'s best interest. Katie has done so and thus as M.N.L.'s primary care parent, she should then be allowed by the court to designate a school district, and thus the court should allow her to change M.N.L.'s school from St. Ansgar to Riceville.

As to *Gaswint v. Robinson*, Gary misstates that *Gaswint* finds a primary care parent could not "have control over the school where the child was to attend" (Appellee's Br. p.51) insofar as he ignores the fact that *Gaswint* is an appeal of an initial school determination by the court when it simultaneously awarded the parties *joint physical care*, and thus the trial court underwent its analysis with joint physical care in mind. Further, Gary does not include that the court stated the "physical caretaker's residence clearly impacts the school alternatives and may compel the ultimate decision." *Gaswint*, 2013 WL 4504879, at *5. Additionally, as to

transportation, Gary fails to mention the *Gaswint* court also found it favorable to designate a school for the minor child that eliminated a thirty (30) minute bus ride for the child. *Id.*

The court in making its determination as to M.N.L.'s school on appeal should take into account Katie's primary care residence, the travel time for M.N.L. to get to school ranging from twenty-five (25) to seventy-five (75) minutes, Katie's showing that there has been a material change in circumstances and that the school change to Riceville is in M.N.L.'s best interest.

Public policy would also support a finding that a court should give deference to the primary care parent's residence in making a school choice determination. Judge Mullins in his partial dissent to *Gaswint* asserted that when the court designates a physical caretaker, managing the life of a child should be entrusted to the person so designated, subject to the rights to equal participation provided in section 598.41(5)(b), but not subject to micromanagement to the court. The *Gaswint* court awarded dad primary care, and Judge Mullins stated he would vacate the court's decision as to the school district and designate the one that primary

care dad desired. While not controlling, this public policy rationale is relevant in the court's determination and consideration of this case.

Gary also cites *In re Marriage of Comstock* , No. 20-1205, 2021 WL 1016601 (Iowa Ct. Mar. 17, 2021), to support his position. In *Comstock*, the court did not engage in a full discussion of the issue of primary care parent being able to make a final decision regarding the children's school enrollment since it viewed the case as involving a temporary order and seeing that a final hearing on the petition for modification had not yet been held. Thus, the court did not want to rule on the issue as such and sent the case back to the district court for it to determine what school was in the children's best interests. *Id.* at *2. Gary misstates the case for the court in saying the court relied on *Harder* to support its decision to remand the case back to the district court for it to look to what was in the child's best interest as to the school determination issue when, in fact, the *Comstock* court did not engage in discussing something that it viewed as temporary.

Further, the facts of *Comstock* differ greatly from those of the present case. In *Comstock*, the primary care parent changed the children's school over the other joint legal custodian's objection. This bad behavior would not have been viewed favorably by the court in making its determination, and it cannot be said the bad acts did not carry any weight or did not negatively affect the outcome of the case against primary care mom.

In the present case, Katie and Gary attempted to resolve the issue prior to the modification being brought, and while this modification has been pending, M.N.L. has remained at her school in St. Ansgar, and Katie has not gone over Gary's head or behind his back, but rather is pursuing the proper legal remedy to change M.N.L.'s school.

Katie is asking the court to honor her primary care parent status and allow her to enroll M.N.L. in Riceville schools. Katie has shown there are material changes that provide grounds for a modification regarding M.N.L.'s schooling and that doing so is in her best interest. This is not a case of one joint legal custodian attempting to "steamroll" over the other, but rather a joint legal

custodian trying to do what is in the best interest of the minor child where the parties could not agree otherwise. Katie brought this modification as it is the only way to make a change to M.N.L.'s schooling given the terms of the parties' Stipulation.

While Gary is correct in pointing out joint legal custodians have equal rights to participate in the minor child's education under 598.41(5)(b), it does not change the fact that Katie is M.N.L.'s primary physical caretaker with the ability to designate M.N.L.'s primary residence, and that residence should be given weight in any school district determination. Had the cases cited come before the court with one parent having primary care, the analysis would change – change the facts, change the outcome. It is not valid for Gary to ignore Katie's primary care parent status and rather urge the court to treat the parties as if they had both joint legal and joint physical care.

After citing these cases, Gary states Katie's primary change of circumstance since the original decree in 2018 is that M.N.L.'s siblings now both attend Riceville schools. (Appellee's Br. p.52.) This completely ignores the concerns Katie has with M.N.L.'s

education, both as to quality and individual instruction/assistance, the transportation issue, and M.N.L.'s desires that all contribute to the material change in circumstances. As to M.N.L. attending school with her sisters says the girls will be in different areas and their only interaction would be passing each other in the halls. *Id.* Even if the girls do not have substantial interactions, M.N.L. and her sisters would be at the same school, something they all would have in common and could bond over – the same argument just in reverse that Gary makes as to why M.N.L. should stay at St. Ansgar. (Appellee's Br. 59.)

Gary again brings up logistics and transportation as the driving issues for this modification, framing the transportation issue as something that previously has not been an issue. (Appellee Br. p.54.) He notes Katie testified in previous years it "just happened to work out," but he ignores Katie's larger statement that there have been significant problems when it came to transporting M.N.L. and her siblings to and from school (Tr. 87:4-15), especially after considering K.L. changing to Riceville in 2021 and the youngest daughter set to start school there in the three-year-old

preschool program (Tr. 56:16-21, 15:5-9, 17:8-15.) Context here is important and Gary attempts to frame this issue as one that is not as serious as it is, even when he too has expressed frustration with the length of M.N.L.'s bus ride that she must take to school when Katie or her husband are unable to drive her themselves. (Tr. 58:2-8, 100:16-22.) Gary further misstates the record by saying Katie was able to get M.N.L. to school by driving her every day as Katie and her husband testified M.N.L. either will take the bus or one of them drives her to school as they can. (Tr. 20:22-21:15, 87:4-15, 116:17-24, 119:1-5.)

Gary's brief spends time discussing his willingness to provide transportation and the 1.904 Motion from April 27, 2023, the subsequent Partial Resistance on May 8, 2023, and Order from the district court on May 16, 2023, saying that the logistical problem would have been eliminated but Katie did not want Gary to provide transportation. (Appellee's Br. p.54.) Katie in her 1.904 stated why she did not want Gary to become involved in transportation – that the parties have such a deteriorated relationship and wished to

avoid the associated forced daily physical contact with one another. (App. at 108-109.)

Katie is clear she wants to avoid having to interact with Gary, as the parties do not get along, and thus Gary's contention that she does not indicate why she does not want Gary to provide transportation is not accurate. (Appellee's Br. p.54.) While Gary providing transportation would solve only part of the problem constituting a material change in circumstances, it would open the door to another as the parties would be forced to interact more, leading to more conflict, creating more tension, and creating problems that each party assumably would wish to avoid. Further, even with Gary providing transportation, the twenty-five (25) minute car ride from Katie's home in Riceville to school in St. Ansgar is not ideal and, as mentioned, the court in *Gaswint* found a similar thirty (30) minute commute was not in a child's best interest in the face of a school that did not require such a commute. *Gaswint*, 2013 WL 4504879, at *5.

Lastly, as to transportation, Gary claims this issue has existed since late 2018, or early 2019 when Katie moved to Riceville,

and existed before that when she lived in Grafton or Northwood. (Appellee's Br. p.55.) However, there is no such testimony in the record as to when transportation became an issue, and what issues, if any, existed when Katie lived in the various towns near St. Ansgar after the parties ended their relationship. It could be assumed the major shift in ease of getting M.N.L. to school was when K.L. began attending Riceville schools in 2021 as Katie seems to indicate as such via her testimony at trial. (Tr. 85:19-86:16.) Thus, Gary's claim that this issue has been around since as early as 2018 is unsubstantiated and false since Katie appears to say the issues really began in 2021 when she needed to get two kids to two different schools. In interpreting this change to have arisen in 2021, it would contribute to the overall change in circumstances that warrant M.N.L. switch in school districts.

Also, in this section of his brief, Gary includes mentions of K.L., her special needs and her educational needs. K.L. is not a minor who is the subject of this case, and thus evidence of her education, special needs, AEA services, and any IEP or plan she would have in place is not entirely relevant. However, to the extent

it is relevant, Katie testified to K.L.'s needs, how St. Ansgar was not carefully following her IEP, and how Riceville has helped her to do "exceptionally well." (Tr. 16:6-16.) Katie in observing both K.L. and M.N.L. at St. Ansgar and K.L. at Riceville felt comfortable enough with her first-hand observations to say Riceville would be able to provide a better education for M.N.L. as was doing for K.L. (Tr. 35:12-18.)

On the topic of education, Gary states Katie ignores M.N.L. "achieving beyond the state benchmarks for her grade level" and rather focuses on perceived spelling and punctuation errors and scoring of two assessment programs. (Appellee's Br. p.56-7.) On the contrary, Katie testified that M.N.L. was failing to meet grade-level expectations more so than in previous years, not meeting third-grade benchmarks without such shortcomings being addressed by her teachers and exhibiting issues with her writing skills. (App. at 149; App. at 160; Tr. 29:8-22, 35:12-18, 179:12-180:13.)

Further, there are concerns any benchmarks M.N.L. has met at St. Ansgar are not accurate as there was testimony at trial that such score requirements have been lowered to ensure more children

are successful in reaching said benchmarks. (Tr. 174:20-24.) Lastly, as to class size, Gary attempts to say there are only twenty (20) kids in M.N.L.'s class but also states correctly there are over sixty (60) kids in the class. (Appellee's Br. p.57; Tr. 32:15-20, 169:5-20, 103:2-15; App. at 178.) It is not disputed there actually are more than sixty (60) kids in M.N.L.'s grade at St. Ansgar, and that is sixty (60) some odd kids for the teachers to keep track of and teach, with one teacher acknowledging there are too many kids for her to be able to track and assist each one individually if need be. (Tr. 32:12-20.)

For all the aforementioned herein and in Appellant's Brief, Katie has shown M.N.L. is not thriving in her current school district, as evidenced by her slipping scores and inability for individuated help from her teachers, and that M.N.L. would have better educational opportunities in Riceville. Further, and contrary to Gary's assertion otherwise (Appellee's Br. p.58), Katie has shown there has been a material change in circumstances that would warrant modification of M.N.L.'s school district.

Gary's brief also discusses what he frames as Katie's arguments as to why a school change is in M.N.L.'s best interest,

namely that such a change would not affect his and M.N.L.'s relationship and that M.N.L.'s St. Ansgar relationships could "easily be replaced by similar relationships in Riceville." (Appellee's Br. p.59.)

As to the first point that this change would impact Gary and M.N.L.'s relationship, he cites things he does at present with M.N.L. in such a way that it appears he is saying should M.N.L. change schools, he no longer would be able to do these things. *Id.* He lists activities like talking with her teachers, eating lunch with her at school, attending her Riceville activities and events, as well as taking M.N.L. to St. Ansgar activities and events during his parenting time. *Id.* Gary does not state how the change in schools will affect his relationship with M.N.L. very clearly and further does not explain why these items listed would have to cease should M.N.L. be moved from a school that is failing to meet her educational needs. Since Gary appears to state the two communities are not that far from one another, he would be able to drive to Riceville schools fairly easily and be able to continue these

activities with M.N.L. and remain just as involved in her education and extracurricular activities.

Gary also sets forth a laundry list of things he alleges Katie has not done or failed to do in terms of supporting M.N.L.'s activities in St. Ansgar. (Appellee's Br. p.59) Gary in support cites the alleged reasons for the previous modification, an issue that was resolved in 2020. (*See* App. at 66.) One such reason related to M.N.L.'s dance classes, and at trial Katie testified M.N.L. would be able to still attend her dance classes regardless of where she attends school, and Gary further testified Katie since the 2020 modification for the most part has been more cooperative with dance classes. (Tr. 26:15-20, 58:12-21.)

Gary goes on to state Katie has refused to communicate, take M.N.L. to activities, or make changes to the parties' parenting schedule. (Appellee's Br. p.59-60.) During trial though, he did admit these instances were not recent and most occurred a couple of years ago. (Tr. 58:12-16, 59:11-60:5.) He also states there is no indication Katie will support M.N.L.'s activities in St. Ansgar, ignoring Katie's testimony to the contrary. (App. Br. 28, 30, 31; Tr. 26:15-24, 115:3-

14.) Gary also speculates Katie is unable to juggle the needs of three kids and that impacts her ability to attend M.N.L.'s events, which Katie finds it wildly inappropriate that he attempts to use her other daughters against her when she is championing for M.N.L.'s best interest as it relates to M.N.L.'s education, social and familial relationships, and M.N.L.'s desires.

Katie further is accused of underestimating the strength of M.N.L.'s relationships in St. Ansgar and "assumes without evidentiary support, that the same type of relationships will be formed in Riceville." (Appellee's Br. p.60.) To the contrary, Katie acknowledges M.N.L. has strong relationships with other children in St. Ansgar and since M.N.L. will continue to attend her activities there, those relationships are not in jeopardy. (Appellee's Br. 32-33; Tr. 26:15-24.) Further, testimony at trial established that M.N.L. is a social, happy child who has no issues making friends, and thus Katie does not have concerns regarding M.N.L.'s change in the school district. (Tr. 34:6-8, 60:6-10, 77:9-15, 116:1-9, 125:15-17.)

Additionally, Katie moved to her new Riceville home in town in March of 2023, and in the month since living there prior to her

testimony at trial, she stated M.N.L. has formed friendships with kids in the new neighborhood as well as bonds with K.L.'s Riceville classmates. (Tr. 11:51-23, 34:12-20, 114:14-22.) Katie does not dispute M.N.L. has activities and friends in St. Ansgar and wants those things to continue but wants to put M.N.L.'s education first and in knowing M.N.L. as a friendly, outgoing kid, that she will form bonds and friendships as she has previously.

Gary states in his summary that M.N.L. is happy where she is and doing well academically. (Appellee's Br. p.61.) However, M.N.L. has told multiple people she wants to change schools and attend school with her sisters, and Katie has very real concerns with M.N.L.'s St. Ansgar education, as well as with her test scores and writing skills. (App. at 154; Tr. 17:16-18, 18:12-16, 30:2-18, 75:24-76:6, 101:14-24, 115:3-10.) Both Katie and Gary in their briefs set forth their support of M.N.L.'s activities and hopes that she still be involved in the activities she enjoys. Further, both parents have expressed concerns as to M.N.L.'s commute to school. After considering the arguments in this brief and Appellant's main brief, the court should find Katie should be allowed to change

M.N.L.'s school district as there has been a material change in circumstances and because such a change is in M.N.L.'s best interest.

Conclusion

Gary wrongly claims; "Katie has not sustained her burden of proof that there has been a material change in circumstances since the original decree designating St. Ansgar as the school for M.N.L.'s attendance and if she has, she has not shown that it is in M.N.L.'s best interest to change school districts." (Appellee's Br. p.49.) Katie has shown there has been a material change in circumstances that warrant the modification of M.N.L.'s school district, and further, this change is in M.N.L.'s best interest. Therefore, this court should:

1. modify the district court's Decree to have M.N.L. attend the Riceville School District now and hereafter; and
2. order Gary to pay court costs.

Request for Oral Argument

Counsel for Appellant respectfully requests to be heard in oral argument.

Respectfully submitted,

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Certificate of Service

Pursuant to Iowa Appellate Procedure 6.701 and 6.901, the undersigned hereby certifies that on the 14th day of December 2023, the Brief was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Andrew B. Howie
Andrew B. Howie

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December 14, 2023
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