IN THE SUPREME COURT OF IOWA
No. 22-0686

IN RE: THE MARRIAGE OF MARY C. FRAZIER AND SHANNON L. FRAZIER

UPON THE PETITION OF
MARY C. FRAZIER,
n/k/a MARY C. STREICHER,

Petitioner / Appellant,

AND CONCERNING
SHANNON L. FRAZIER,

Respondent / Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR CLINTON COUNTY, JOHN D. TELLEEN, JUDGE
(CASE NO. CDCV040786)

FINAL BRIEF FOR APPELLANT MARY C. STREICHER

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ROUTING STATEMENT

The Supreme Court should retain this case pursuant to appellate rule 6.1101(2) because it presents a fundamental and urgent issue of broad public importance that requires ultimate determination by the Supreme Court, as well as presenting a substantial question of enunciating basic legal principles that have vexed parents and practitioners for decades.

STATEMENT OF THE CASE

NATURE OF THE CASE

This is an action concerning the district court's jurisdiction and authority to resolve a post-decree dispute between joint legal custodians about a major parenting decision, without either party taking unilateral action or needing to file a petition to modify legal custody.

COURSE OF PROCEEDINGS

Mary C. Streicher, f/k/a Mary Frazier (Mary), petitioned for the dissolution of her marriage to Shannon L. Frazier (Shannon) on January 21, 2014. (Appendix (App.) page (p.) 5 [Petition for Dissolution of Marriage (Petition)]). The Honorable Nancy L. Tabor, sitting in the Iowa District Court for Clinton County (District Court), approved the parties' Decree of Dissolution of Marriage on September 23, 2014. (App. 31 [Decree]). The Decree incorporated the parties' Stipulation of Settlement (Stipulation),

which outlined, inter alia, the parties' agreements related to custody of their children. (App. 32, 10 [Decree, ¶ 7, Stipulation (Stip.) § II (1)]).

In the Stipulation, the parties agreed to joint legal custody of their children, LBF (born in 2011) and OAF (born in 2013). (App. 10 [Stip. § II (1)]). The Stipulation also sets forth mechanisms for the parties to resolve disputes related to the children. (App. 13 [Stip. § II (1)(n)]). After reaching a disagreement with Shannon resulting in a genuine impasse pertaining to the children's health, on January 31, 2022, Mary filed Petitioner's Application for Vaccination Determination (Application). (App. 34 [Application]). On February 10, 2022, Shannon filed a Resistance to the Application. (App. 37 [Resistance to Petitioner's Application for Vaccination Determination (Resistance)]). On February 15, 2022, Mary filed a Reply. (App. 40 [Reply to Resistance to Petitioner's Application for Vaccination Determination (Reply)]). Thereafter, the District Court set the matter for a hearing to take place on March 25, 2022. (App. 44, 46 [Order Setting Hearing, Order Setting Hearing by Video Conference]). A hearing was held via Zoom on March 25, 2022, and counsel for each party appeared and made oral arguments.[1]

Following that hearing, the District Court denied Mary's Application

[1] This hearing was reported and the transcript filed on May 13, 2022.

on the basis that it did not have jurisdiction to make a determination in the absence of a petition for modification. (App. 49 [Order Denying Petitioner's Application for Vaccination Determination]).

Mary timely filed notice of appeal on April 21, 2022.

STATEMENT OF THE FACTS

Mary and Shannon married on October 30, 2010. (App. 5 [Petition p. 1]). They have two minor children: LBF (born in 2011) and OAF (born in 2013). (App. 10 [Stip. § II (1)]). Since the parties' dissolution in September 2014, they have maintained joint legal custody of LBF and OAF (App. 10 [Stip. § II (1)]). Like many parents raising minor children during a global pandemic, Mary and Shannon attempted to work through a disagreement about whether to vaccinate their children against the coronavirus disease of 2019 (COVID-19). (App. 34 [Application]). Mary wished to vaccinate the children, and Shannon did not. (App. 34 [Application]). After attending an unsuccessful mediation to resolve their disagreement about vaccination, Mary filed her Application hoping the Court would resolve the parties' impasse. (App. 34 [Application]). Rather than unilaterally taking the parties' children to obtain their COVID-19 vaccines, Mary has followed all formal processes to resolve this dispute out of acknowledgement and appreciation for what it means to be a joint legal custodian.

ARGUMENT

THE DISTRICT COURT ERRED WHEN IT DETERMINED IT DID NOT HAVE JURISDICTION TO FUNCTION AS TIE-BREAKER BETWEEN JOINT LEGAL CUSTODIANS WHEN THE PARTIES HAD REACHED A GENUINE IMPASSE ON WHETHER TO VACCINATE THEIR CHILDREN

A. Preservation for Appellate Review

The issue of the District Court's jurisdiction was preserved for review.

B. Scope and Standard of Appellate Review

Pursuant to Iowa R. App. P. 6.907, "[r]eview in equity cases shall be de novo." This case is in equity and must therefore be reviewed de novo.

C. Applicable Law

The Court's Authority and Obligation to Resolve Disputes Between Joint Legal Custodians

Iowa Code section 598.1(3) defines "joint custody" or "joint legal custody" as:

> "[A]n award of legal custody of a minor child to both parents jointly under which both parents have legal custodial rights and responsibilities toward the child and **under which neither parent has legal custodial rights superior to those of the other parent**. Rights and responsibilities of joint legal custody include but are not limited to equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

Id. (emphasis added). Iowa Code section 598.41 additionally governs child custody. "Custody" refers to the scope of a parent's "[r]ights and

responsibilities" as it relates to their minor children and includes, inter alia, "decisions affecting . . . medical care[.]" *Id.* at § 598.41(5). "The legislature and judiciary of this state have adopted a strong policy in favor of joint custody from which the courts should deviate only under the most compelling circumstances." *In re Marriage of Winnike*, 497 N.W.2d 170, 173 (Iowa Ct. App. 1992); *see* Iowa Code § 598.41(2)(a), *In re Marriage of Brainard*, 523 N.W.2d 611, 614 (Iowa Ct. App. 1994), *In re Marriage of Bolin*, 336 N.W.2d 441, 446–47 (Iowa 1983) (noting that "tension between parents is not alone sufficient to demonstrate" that joint legal custody is not appropriate).

"When joint legal custodians have a genuine disagreement concerning a course of treatment affecting a child's medical care, the court *must* step in as an objective arbiter and decide the dispute by considering what is in the best interest of the child." *Harder v. Anderson*, 764 N.W.2d 534, 538 (Iowa 2009) (emphasis added). This has been referred to as "the tie-breaker designation[.]" *Kocinski v. Christiansen*, 2021 WL 5106051, *4 (Iowa Ct. App. 2021). The court of appeals recently acknowledged and explained that in the absence of court intervention, what "[f]requently" occurs is that "the joint custodian parent who does not have physical care is at the mercy of the joint legal custodian who does have physical care"

because the latter "unilaterally acts to break . . . ties[.]" *In re Marriage of Rigdon*, 2020 WL 7868234, *2 (Iowa Ct. App. 2020). In effect, the "joint legal custodian parent who does not have physical care [has] a forty-nine percent" interest in decision-making and "the parent with physical care owns [a] fifty-one percent" interest in decision-making. *Id.* This reality runs directly contrary to the statutory guarantee that in a joint legal custody arrangement, "neither parent has legal custodial rights superior to those of the other parent[.]" Iowa Code § 598.41(3).

Cases interpreting *Harder* have clarified that other major parenting decisions besides those related to medical care, like "educational decisions," fall within the category of decisions the court must step in to resolve if joint legal custodians reach an impasse. *In re Marriage of Comstock*, 2021 WL 1016601, *2 (Iowa Ct. App. 2021) ("We have previously found that educational decisions fall within this category." (internal citations omitted)); *In re Marriage of Bakk*, 2013 WL 5962991, *2 (Iowa Ct. App. 2013) ("We find educational decisions fall within this category."); *Gaswint v. Robinson*, 2013 WL 4504879, *5 (Iowa Ct. App. 2013) ("We acknowledge, however, the physical caretaker's residence clearly impacts school alternatives and may compel the ultimate decision."); *In re Marriage of Laird*, 2012 WL 1449625, *2 (Iowa Ct. App. 2012) ("That reasoning applies equally to

decisions concerning a child's education."). In other words, the *Harder* progeny has concluded that the Court's authority to resolve disputes is broad enough to apply to more than just medical records. Still, the cases interpreting *Harder* have yet to expand beyond those major parenting decisions enumerated in Iowa Code section 598.1(3) (i.e., legal status, medical care, education, extracurricular activities, and religious instruction).

Authority for Court to Take Action Short of Modifying Decree, Custody, or Parenting Time Arrangements

The district court has jurisdiction to enforce and interpret a decree through, among other things, an action for contempt. *See, e.g.,* Iowa Code §§ 598.23–24. The district court also has jurisdiction to modify a decree. *See, e.g.*, Iowa Code §§ 598.21(c)–(d), 598.36. However, joint legal custodians sometimes have needs that require neither contempt nor a modification. *See Hemesath v. Bricker*, 2010 WL 446990, *3 (Iowa Ct. App 2010) (determining that although modifying the decree was inappropriate, the court found it necessary to consider the merits of the issue of a school determination). Iowa courts have considered whether a party has been able to establish that a specific major parenting decision would be in the child's best interests. *Id.*; *see also Vogt v. Hermanson*, 2017 WL 2875697, *2 (Iowa Ct. App. 2017) (considering whether a party was able to show that removing the child from a particular school district was in the child's best interest, and

noting that there was not evidence the child would obtain a material benefit in changing school districts), *Gaswint,* 838 N.W.2d at *5 (explaining that the district court can make a decision regarding the school the child should attend).

Precedent for Addressing Applications for Determination to Resolve Disputes Between Joint Legal Custodians

Parties who have sought court intervention to have disputes resolved, short of filing a petition for modification, have historically used an "application for determination." *See In re Marriage of Jacobs*, 2017 WL 5185435, *1 (Iowa Ct. App. 2017) (examining an "application for determination of postsecondary education"), *In re Marriage of Bieber*, 2011 WL 1136273, *1 (Iowa Ct. App. 2011) (examining an "application for determination of school district"), *In re Marriage of Beal*, 2006 WL 1279054, *1 (Iowa Ct. App. 2006) (referencing both an "application to determine summer visitation" and "an application for determination of kindergarten" having previously been filed in the case).

In some cases, a post-decree request made for a determination on a matter where the decree is silent is not a request for modification at all, but rather "an additional determination . . . within the original dissolution proceedings." *In re Marriage of Teepe*, 271 N.W.2d 740, 742 (Iowa 1978) (determining custody where the decree was silent on the issue). In at least

one case, the court of appeals explained that "[a]lthough it accept[s] [its] role as a final arbiter in disputes between legal custodians, when the decree does not address the issue in dispute, a modification action is not the appropriate vehicle to address the issue."[2] *Hemesath*, 2010 WL 446990 at *4.

Iowa Courts Disfavor the Use of "Magic Word" Tests and Analysis for Legal Frameworks

Finally, Iowa law generally disfavors the use of "magic words" as a trigger or basis for meeting legal requirements. *See, e.g.*, *Godfrey v. State*, 962 N.W.2d 84, 106 (Iowa 2021) (explaining that magic words are not required for an employee to indicate to an employer that the employee believes discrimination is occurring), *Haskenhoff v. Homeland Energy Solutions, LLC*, 897 N.W.2d 553, 623 (Iowa 2017) (explaining that Iowa "law does not require magic words for jury instructions"), *State v. Tipton*, 897 N.W.2d 653, 683 (Iowa 2017) (explaining that magic words are not required in the context of making a finding that fraud occurred), *State v. Gaston*, 2005 WL 839902, *1 (Iowa Ct. App. 2005) (explaining that trial courts need not use magic words during plea proceedings).

[2] Moreover, even if a modification action was filed, the theoretical appropriate relief would be to grant sole legal custody to one parent for purposes of a specific decision, which is disfavored in Iowa. *See Armstrong v. Curtis*, 2021 WL 210965, *4 (Iowa Ct. App. 2021) ("In unbundling the authority to make medical and educational decisions…, the court in effect awarded [father] sole legal custody over those issues.").

D. Arguments

The only issue on appeal is whether the District Court has jurisdiction to address Mary's Application. Not only does the District Court have jurisdiction to address Mary's Application, it has an obligation to do so by analyzing the children's best interests under the circumstances. Mary is not seeking contempt against Shannon, nor is she requesting to modify custody or parenting time. The District Court's obligation to address and resolve her Application does not require Mary to use some specific procedural mechanism. The District Court's obligation necessarily follows from Mary's right to equal participation in major parenting decisions.

The District Court's jurisdiction over post-decree matters is not so rigid or limited as to require parties to file for a modification (when a party isn't actually seeking to modify prior orders) or contempt (when a party isn't actually alleging willful noncompliance with prior orders) to obtain timely and appropriate resolution. Such "magic word" tests (e.g., requiring Mary to cast her application for determination as a petition to modify, even when she isn't asking the District Court to modify prior orders) are disfavored in Iowa, and create an unnecessarily technical and unresponsive system.

The District Court Has an Obligation to Protect the Statutory Rights of Joint Legal Custodians By Exercising its Tie-breaking Authority

Mary and Shannon are joint legal custodians of LBF and OAF (App. 10 [Stip. § II (1)]). Under Iowa Code section 598.1(3), as joint legal custodians, neither Mary nor Shannon have rights superior to the other when making decisions about LBF and OAF's medical care. Here, neither Mary nor Shannon has more authority than the other to decide whether to vaccinate *or not vaccinate* LBF and OAF.

To fully effectuate to the statutory guarantee of Mary and Shannon's joint legal custody, neither party can be allowed to make major parenting decisions without the other party's equal participation. Instead, the parties must attempt to make major parenting decisions by way of agreement or compromise; still, there are inevitably times when, despite parties' best efforts, no agreement or compromise can be reached informally. Once informal efforts are exhausted and joint legal custodians remain at an impasse, the court must *necessarily* step in and make a decision considering the child's best interests. Failure to intervene will mean one parent can veto or trump the other parent's decision-making authority, even if the vetoing party is acting in a manner diametrically opposed to the children's best interests. Put another way, the parent refusing to act will, in effect, have superior custodial rights over the other parent, which is directly contrary to

the statutory guarantees of Iowa Code section 598.1(3).

Here, Shannon has vetoed Mary's request to have the COVID-19 vaccine administered to LBF and OAF, simply by way of disagreement. As a joint legal custodian, Mary has exactly as much authority to vaccinate the children as Shannon does to prevent vaccination; yet, by failing to exercise jurisdiction, the District Court is passively granting Shannon superior custodial rights to Mary, directly undermining Mary's right to equal participation in major parenting decisions.

There are significant consequences of the District Court refusing jurisdiction to make tie-breaking determination for joint legal custodians. First, if the District Court has no jurisdiction to resolve an impasse between joint legal custodians, then in Iowa, contrary to Iowa Code section 598.1(3), joint legal custody means that the parties have equal participation in major parenting decisions only when they are in agreement. When the joint legal custodians do not agree, only the rights and desires of the parent who believes it is in the children's best interest to maintain the status quo will be effectuated, and the other parent's custodial rights and desires are ignored, rendering the guarantee of equal participation in section 598.1(3) meaningless. In effect, absent subsequent court intervention, the obstructionist parent ultimately prevails, regardless of whether the children's

best interests are being served.

Second, unless joint legal custodians are willing to forego their custodial rights in favor of the status quo, they will have to rely on contempt actions to resolve disagreements over major parenting decisions. As in *In re the Marriage of Rigdon*, when parties disagree, one of the parents may simply take unilateral action to depart from the status quo to effectuate their parenting preferences. *Rigdon*, 2020 WL 7868234 at *2 (holding that a father was ultimately not in contempt of court when he unilaterally vaccinated the parties' children over and above the mother's preferences). Forcing joint legal custodians, like Mary, to choose between foregoing their right to equal participation, or instead risk being held in contempt by taking unilateral action, is a nonsensical and unacceptable framework for resolving major parenting decisions, particularly because these decisions directly affect the best interest of the children. Moreover, a contempt action impliedly means the decision has already been made and/or the action already taken, for which an outcome would be reactive or punitive, not proactive or prospective.

Here, Mary and Shannon have a sincere disagreement concerning a course of treatment affecting LBF's and OAF's medical care – namely, whether to have the COVID-19 vaccine administered. Mary and Shannon

exhausted informal efforts to find solutions by way of agreement and compromise. Accordingly, the District Court must step in to resolve the dispute consistent with LBF and OAF's best interests; otherwise, Mary's right to equal participation is anything but equal. Her only alternative would be to vaccinate the children against Shannon's wishes, which she does not want to do and which would deprive Shannon's right to equal participation.

The District Court Must Apply a Best Interests of the Child Analysis to Resolve the Dispute

Because Mary is not seeking to modify the parties' custody or care arrangements, the Application is not prompted by a change in circumstances. To be clear, the presence of a new virus so deadly that it shut down the world economy is certainly a change in circumstances; however, because Mary is seeking resolution of a dispute instead of a modification, proving a change in circumstances is unnecessary. As the Court explained in *Harder*, when joint legal custodians reach an impasse, "the court must step in as an objective arbiter, and decide the dispute *by considering what is in the best interests of the child*." *Harder*, 764 N.W.2d at 538 (emphasis added).

The primary concerns here should be: 1) that the parties are, in fact, joint legal custodians, 2) that their dispute involves a major parenting decision enumerated in section 598.1(3), 3) that the parties have made efforts at resolving their dispute and have reached an impasse in good faith,

and 4) that resolving the dispute will ensure that the children's best interests predominate.

Here, the parties are joint legal custodians. Their dispute is about whether their children should receive the COVID-19 vaccine, which is a parenting decision involving "medical care," one of the major parenting decisions enumerated in Iowa Code 598.1(3). Mary and Shannon have attempted to resolve this matter informally on their own, have attended mediation in an attempt to resolve their dispute, and have reached an impasse in good faith. Determining whether LBF and OAF should be vaccinated will ensure that, despite Mary and Shannon's impasse, the best interests of their children will predominate.

Requiring a Petition to Modify to Invoke the Court's Jurisdiction is Contrary to the State's Preference for Joint Legal Custody

Mary recognizes that not every change in circumstances warrants a modification of parties' custody arrangements, which is why her request to the District Court was an Application for Vaccination Determination and not a petition to modify the parties' Decree. Asking only for a determination on this narrow issue epitomizes how measured Mary has been in her approach to obtaining resolution, and how respectful Mary has been of Shannon's rights as a joint legal custodian. Mary does not wish to remove or alter Shannon's status as joint legal custodian. This is admirable and consistent

with the statutory preference for joint legal custody. Mary's approach reflects the model approach: she exhausted all informal efforts to resolve this dispute with the other joint legal custodian, she did not take the children to receive the vaccine unilaterally, and she only came to the District Court when no other option was left, making the narrowest request possible.

Just the same as parties who have sought the court's help to resolve issues related to post-secondary education, school district determination, and decisions related to summer visitation, Mary simply requested that the District Court resolve this narrow dispute on medical care because it directly affects LBF's and OAF's best interests. Mary has done everything right, and a dispute with the other joint legal custodian still persists. If the court is going to require parties like Mary to take unilateral action or seek resolution through modification actions, parents may not be as measured or respectful in the future, and it may create unnecessary acrimony between parties.

Requiring a Petition to Modify to Invoke Jurisdiction Implies that District Courts are Unable to Take Any Post-Decree Actions Other Than Modifying a Decree Which is Inconsistent with the State's Preference For Joint Legal Custody

Filing a modification petition is undoubtedly one way to notify the court that parties need and have requested a post-decree resolution. The issue here is whether a joint legal custodian must actually request that the court "modify" the decree to get the court to resolve a dispute, even if

neither party desires for the decree to be modified. The *Harder* case clearly answers this question in the negative. If parties do not wish to modify their decree, they should not be required to ask the court for modification due to some procedural technicality.

It is possible (and preferable) for parties to seek court intervention to obtain a decision narrower than a modification of their custody arrangements. As long as the court understands what dispute the parties are having, and the dispute involves a genuine impasse on a major parenting decision, it matters not what the specific pleading is called or the precise form in which the request for court intervention is made. To have such exacting, technical requirements would be to exalt form over substance – to create a "magic words" test to invoke the district court's jurisdiction. Magic word tests are disfavored and here would be inconsistent with Iowa's preference for joint legal custody. Moreover, as a practical matter, the typical process for obtaining a court ruling on an application for determination is 90 days or less, whereas the typical process in some districts for obtaining a court ruling in a contested modification action is 18 months or more. By their very nature, the vast majority of joint legal custody disputes involve time sensitive issues (e.g., medical decisions and school enrollment), for which timely resolution is necessary and essential.

Iowa courts have been able to address applications for determination filed by parents in the past, and magic words were not required. The courts have addressed a parent's "application for postsecondary education" in *In re Marriage of Jacobs*, a parent's "application for determination of school district" in *In re Marriage of Bieber*, and a parent's "application to determine summer visitation" and "application for determination of kindergarten" in *In re Marriage of Beal*. *In re Marriage of Jacobs*, 2017 WL 5185435 at *1, *In re Marriage of Bieber*, 2011 WL 1136273 at *1, *In re Marriage of Beal*, 2006 WL 1279054 at *1.

None of the parties in those cases were required to file a modification action to "invoke" the district court's jurisdiction. To do so, particularly when courts faced with petitions for modification have rendered decisions narrower than modifying the decree, would create an overly technical system focused more on format than on the parties' immediate needs.

CONCLUSION

For the reasons stated herein, Mary respectfully requests that the court reverse the District Court's ruling and remand the case to the District Court to determine whether it is in the best interests of LBF and OAF to receive the COVID-19 vaccine and to make orders consistent with such findings.

REQUEST FOR ORAL OR NONORAL SUBMISSION

Mary requests this case be submitted with oral argument, but only in the event the court deems it necessary to decide the controversy.

REQUEST FOR ALLOCATION OF COSTS

Mary requests Shannon be assessed the costs of the appeal.

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ATTORNEYS FOR APPELLANT

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I certify that on **September 7, 2022**, I electronically filed the foregoing with the Supreme Clerk of Court using the Iowa Electronic Document Management System, which will send notification of electronic filing to the following opposing counsel. Per Iowa Rule 16.317(1)(a)(2), this constitutes service of the document for the purposes of the Iowa Court Rules.

Richard A. Davidson, *Attorney for Respondent/Appellee*

/s/ Kristi L. Rottman
Kristi L. Rottman

CERTIFICATE OF COMPLIANCE WITH TYPE REQUIREMENTS

I hereby certify that this final brief complies with the type-volume limitation of Rule 6.903(1)(g)(1) because this brief contains 4,012 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

I hereby certify that this brief complies with the typeface requirements of Rule 6.903(1)(e) and the type-style requirements of Rule 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman.

/s/ Kristi L. Rottman
Kristi L. Rottman