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 REPLY BRIEF FOR APPELLANT MARY C. STREICHER

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STATEMENT OF FACTS RESPONSE

Mary stands by the Statement of Facts set forth in her original brief and will not restate the facts already alleged therein. Notably, however, Mary points out that in Shannon's Statement of Facts, he alleges that the "Decree did not reserve jurisdiction of the court for any purposes whatsoever[,]" but this is not accurate. Rather, the Stipulation provides a section on "Resolution of Conflicts." (App. 13 [Stipulation at II(1)(n)]). It states specifically that "Neither party shall initiate any legal action regarding the above issues, without first attempting to resolve the issue through a counselor or mediator." *Id.* The provision says nothing about modifying the Decree; instead, the provision contemplates what the parties are supposed to do in the event there is a "dispute that cannot be resolved involving the child(ren)'s . . . medical treatment," among other things. *Id.* To suggest that the Decree does not reserve jurisdiction to the court to resolve these issues is contrary to the plain language of this provision and contrary to the parties' intentions in having included this language in their Stipulation. Given that this "reservation" appears to be a central part of Shannon's argument as to why the court is unable to resolve this resolution, the fact that the parties contemplated going to court to resolve major parenting disagreements should be given weight and should be emphasized.

ARGUMENT

I. THE COURT HAS JURISDICTION TO ADDRESS MARY'S APPLICATION FOR VACCINATION DETERMINATION

The Court Has Jurisdiction to Address Mary's Application Because it Pertains to Subject Matter in Iowa Code Chapter 598

One of Shannon's primary arguments is that the court lacks the authority to address "Petitioner's Application for Vaccination Determination" ("Application") because it is not an allowable pleading such as a "Petition." (*See* Proof Brief of Appellee Shannon L. Frazier (hereinafter "Appellee's Brief"), p. 9). This is incorrect for no less than three reasons. First, Iowa Code section 598.2 provides the district court broad jurisdiction over matters described in Chapter 598, and Mary's Application pertains to subject matter within Iowa Code Chapter 598. Second, the parties reserved the court's jurisdiction to make these decisions in their Stipulation. Third, even if the parties had not reserved the jurisdiction, the statutory language in Iowa Code section 598.1(3) nevertheless requires the court to make this decision, and case law interpreting that language confirms this obligation.

First, Iowa Code section 598.2 provides that "[t]he district court has original jurisdiction of the subject matter of this chapter." Chapter 598 addresses a wide array of topics including dissolutions of marriage, annulments, the rights of joint legal custodians, other child custody matters,

modifications of support, custody, and parenting time, and name changes for juveniles. *See generally*, Iowa Code Chapter 598. Iowa Code section 598.2 is a broad grant of jurisdiction over all subject matter included in the chapter. The court has confirmed that it is this provision that gives the court jurisdiction over modifications. *See In re Marriage of Engler*, 523 N.W.2d 747, 749 (Iowa 1995). Iowa Code section 598.2 does not explicitly say that the court has jurisdiction over modification actions; however, because modifications fall within Iowa Code Chapter 598, it makes sense that Iowa Code section 598.2 would give the court jurisdiction over modification actions.

Iowa Code section 598.1(3), a provision within Iowa Code Chapter 598, spells out the definition for joint legal custody and guarantees parents their statutory right to equal participation in major parenting decisions. What joint legal custody is, the rights granted under such a designation, how joint legal custody functions, and how such rights are enforced are all spelled out in Iowa Code Chapter 598. Just like how the court has jurisdiction to address modifications pursuant to Iowa Code section 598.2, under the same provision the court likewise has jurisdiction to address disputes between joint legal custodians to guarantee the statutory rights granted by Iowa Code section 598.1(3). Thus, the court has jurisdiction to address Mary's

Application because it relates to the parties' rights as joint legal custodians —a matter under Iowa Code Chapter 598 over which Iowa Code section 598.2 grants the court jurisdiction.

The Court Has Jurisdiction to Address Mary's Application for Vaccination Determination Because the Parties Reserved Jurisdiction in Section II(1)(n) of Their Stipulation

Second, as noted in the Statement of Facts above and contrary to Shannon's claim that the parties never reserved jurisdiction for the court to resolve these disputes, the parties did reserve the court's jurisdiction to resolve these disputes. (App. 13 [Stipulation at Section II(1)(n)]). In their Stipulation, the parties included and agreed to the following language:

> n. Resolution of Conflicts. Both parents shall be involved in major decisions concerning the child(ren). In the event of a dispute that cannot be resolved involving the child(ren)'s education, religious instruction, medical treatment and extra-curricular activities, the parties shall initiate the scheduling of a counseling/mediation session with a qualified counselor/mediator in an attempt to resolve the dispute. The unaffected parent shall cooperate in the scheduling of the session and shall be available within two weeks of the request or as soon thereafter as the counselor/mediator has an opening. ***Neither party shall initiate any legal action regarding the above issues, without first attempting to resolve the issue through a counselor/mediator.*** The parties shall evenly divide the costs of any session(s) with a counselor/mediator.

Id. (emphasis added). Thus, in the Stipulation, the parties *expressly*

contemplated the need for legal action to resolve major parenting disputes such as the one Mary presented to the District Court. The parties understood that the court might need to resolve disputes about major parenting decisions if the parties could not resolve the matter informally through mediation or counseling. Without a guarantee the court would intervene, there is no incentive for a party to reach an agreement at the requisite mediation session pursuant to Section II(1)(n) of the Stipulation. Shannon suggests that the parties did not reserve jurisdiction of the court for any purposes whatsoever, but the language in Section II(1)(n) of the parties' Stipulation makes clear that is precisely what the parties intended to do.

Moreover, this provision does not say "neither party shall file a *petition for modification* or an *application for rule to show cause* without first attempting to mediate the dispute;" rather, it says neither party shall initiate any "legal action *regarding the above issues*" which, in relevant part, include disputes related to medical treatment. *Id.* (emphasis added). If the parties meant to say that they are required to mediate before filing an action to modify the decree, they would have said so. They did not.

Importantly, a petition for modification would be inappropriate to resolve a dispute between the parties on major parenting decisions (like medical treatment) because such a dispute can easily arise without a

substantial, material, or continuing change in circumstances—as has occurred here. An application for rule to show cause would also be inappropriate because the nature of the disputes described in Stipulation Section II(1)(n) include scenarios where the parties are attempting to resolve a major parenting decision *before* a party has taken any action that would constitute contempt—as is the case here.[1] Thus, when the parties refer to "legal action regarding the above issues" they are referring to a party requesting that the court resolve the dispute about, in relevant part, medical treatments—*separate* from a modification effort or attempt to seek contempt.

If, as Shannon suggests, despite the language in the Stipulation, the parties are unable to ask the court to resolve the dispute, as Mary has attempted to do, then the aforementioned language in Section II(1)(n) of their Stipulation is rendered superfluous. If what the parties actually meant was, "prior to filing a petition for modification, or an action for contempt of court, the parties must engage in mediation" then that is what their Stipulation would say, but it does not say that. For these reasons, the parties

[1] If Shannon's position were to prevail here, a future parent in Mary's position would be incentivized to take unilateral action, rather than seek the advance authorization of the court. Shannon essentially argues for Iowa to adopt, as public policy, the "better to ask forgiveness than permission" approach to resolving joint legal custody disputes.

clearly reserved jurisdiction for the court to resolve disputes about major parenting decisions in Stipulation section II(1)(n). (App. 13 [Stipulation at Section II(1)(n)]).

The Court Has Jurisdiction to Address Mary's Application Because Iowa Code Section 598.1(3) and Subsequent Case Law Requires the Court to Act as Tie-Breaker to Guarantee Joint Legal Custodians' Statutory Rights

Still, even if the aforementioned language reserving the court's jurisdiction were insufficient on its own to resolve this dispute, the language of Iowa Code section 598.1(3) places an affirmative obligation upon the court to resolve the dispute to protect the parties' statutory right to equal involvement in major parenting decisions. If the court refuses to resolve this dispute, then joint legal custodians do not have equal rights under the statute. Iowa Code section 598.1(3) provides that "joint legal custody" is:

> "[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."

Iowa Code § 598.1(3) (emphasis added). The byproduct of this statutory language, irrespective of whether this byproduct is good or bad policy, is

that the legislature gave the court jurisdiction to resolve custodial disputes between joint legal custodians who have genuine disagreements. This is the only way to ensure that neither parent has legal custodial rights superior to those of the other parent. To accept Shannon's argument is to conclude Iowa Code section 598.1(3) provides tie-breaking authority to one of the joint legal custodians—in this case, Shannon—which is directly contrary to both the plain language of the statute, as well as to *Harder v. Anderson* and its progeny. *See Harder v. Anderson, Arnold, Dickey, Jenson, Gullickson and Sanger, L.L.P.*, 764 N.W.2d 534, 538 (Iowa 2009), *In re Marriage of Sokol*, 2022 WL 3440256, *3 (Iowa Ct. App. 2022), *In re Marriage of Comstock*, 2021 WL 1016601, *2 (Iowa Ct. App. 2021), *In re Marriage of Flick*, 2021 WL 2453111, *5 (Iowa Ct. App. 2021), *In re Marriage of Rigdon*, 2020 WL 7868234, *2 (Iowa Ct. App. 2020), *Gaswint v. Robinson*, 2013 WL 4504879, *5 (Iowa Ct. App. 2013), *In re Marriage of Laird*, 2012 WL 1449625, *2 (Iowa Ct. App. 2012), *Hemesath v. Bricker*, 2010 WL 446990, *3–*4 (Iowa Ct. App. 2010). This case is not about whether the consequences of the statutory language in Iowa Code section 598.1(3) are good or bad; this case is about the implications of the statutory language, independent of policy judgments. The implication of the statutory language is that the court must step in to give effect to the parties' rights to "equal"

participation by functioning as the tie-breaker.

Mary's Request is Not a Request to Modify, and A Party Need Not Allege a Significant and Continuing Change in Circumstances to Enforce Their Rights as Joint Legal Custodian

Shannon argues that the only way a party can invoke the court's jurisdiction is to file a "petition for modification." Appellee's Brief at I(C)(1) and I(C)(3). If this is true, then a party can only enforce their statutory rights as a joint legal custodian when a significant and continuing change in circumstances has occurred; this cannot be correct. If this is true, then parents are only joint legal custodians when a change in circumstances occurs; when a change has not occurred, the parent preferring the status quo has superior custodial rights. In fact, the court of appeals has previously acknowledged that asking to clarify custodial rights "under the guise of a modification action . . . is not the appropriate vehicle to address the issue." *Hemesath v. Bricker*, 2010 WL 446990, *4 (Iowa Ct. App. 2010).

Shannon relies on *In re Marriage of Hute and Baker* for the proposition that absent express reservation of jurisdiction in a decree, a petition for modification is necessary to invoke the court's jurisdiction. Appellee's Brief at I(C)(3). However, the issue on appeal in that case was whether the court could modify custodial provisions from sole custody to joint custody absent a showing of a change in circumstances by a

preponderance of the evidence. *See* 2017 WL 3283382, *2 (Iowa Ct. App. 2017). That case is entirely inapposite because nobody here is requesting that the court modify the custodial provisions—in fact, here the parties are explicitly asking the court to *not* modify the Decree. (App. 42 [Reply to Resistance to Petitioner's Application for Vaccination Determination, ¶ 8]; Proof Brief of Appellant, p. 17). All Mary is asking of the court is to exercise its authority to protect and guarantee her custodial rights by resolving a narrow, genuine dispute between she and Shannon as joint legal custodians. Mary does not wish to modify the Decree; she does not believe a change from joint legal custody to sole legal custody (or, for that matter, piecemeal sole legal custody) is in the children's best interests.

The Outcome Mary is Requesting is What is Required Under the Law—Not a Matter of Policy Preference

One place where Shannon and Mary agree is that "[t]here is nothing unambiguous about the words 'equal participation in decisions effecting the child's . . . medical care.'" Appellee's Brief at p. 17. However, Shannon makes a major leap in logic when concluding that, because of that statutory language, "Iowa Code Chapter 598 does not authorize acting as a tie-breaker following an award of joint legal custody." *Id.* This does not logically follow and is also not supported by the case law. Shannon has not cited to a single case that shows the court is prohibited from addressing Mary's Application.

The problem is that Shannon seems to believe that the word "equal" means something different than equivalent, identical, or that neither party has superior rights to the other. For the parties to have "equal participation" neither can trump the other. Here, that means neither can be permitted to have the decisive vote on whether the parties' children obtain a COVID-19 vaccine. The *only* way this can be guaranteed is if the court steps in to be the objective arbiter to resolve this issue in the children's best interests.

This is why time and again, when interpreting the language of the statute, the court has made clear that "[w]hen joint legal custodians have a genuine disagreement concerning" a decision enumerated by Iowa Code section 598.1(3), "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 v. Anderson,* 764 N.W.2d at 538, *In re Marriage of Sokol*, 2022 WL 3440256 at *3, *In re Marriage of Comstock*, 2021 WL 1016601 at *2, *In re Marriage of Flick*, 2021 WL 2453111 at *5, *In re Marriage of Rigdon*, 2020 WL 7868234 at *2, *Gaswint v. Robinson*, 2013 WL 4504879 at*5, *In re Marriage of Laird*, 2012 WL 1449625 at *2, *Hemesath v. Bricker*, 2010 WL 446990 at *3–*4.

Shannon argues that these cases do not stand for the proposition that the court has the authority and obligation to act as an objective arbiter to

resolve disputes between joint legal custodians. *See* Appellee's Brief at p. 19. Shannon reasons that this is because *Harder* is "not a divorce case." *Id.* Shannon admits that the case involves "a parent holding joint legal custody" and then makes the conclusory statement that it does not stand for the proposition that the court step in as a tie-breaker. *Id.* Shannon provides no legal analysis for how he draws this conclusion other than the case not being a "divorce case." Ultimately, what matters is not whether the case is a divorce case—what matters is that the court is analyzing the rights of joint legal custodians pursuant to Iowa Code section 598.1(3)—which all of the cases above do.

In fact, as recently as August 17, 2022, the court of appeals re-emphasized this line of reasoning by explaining that "[t]he code does not permit an unequal distribution of decision-making authority . . . when both parents retain joint legal custodian powers." *In re Marriage of Sokol*, 2022 WL 3440256 at *3. By refusing to step in and act as an objective arbiter on the grounds it lacks jurisdiction, the court is awarding Shannon (and any future obstructionist parent) tie-breaking authority to unilaterally determine that the children should not be vaccinated against COVID-19—thereby undermining Mary's rights as a legal custodian and rendering the guarantees in Iowa Code section 598.1(3) meaningless. The court must accept Mary's

Application and make a determination in the best interests of the children.

Requiring that Applications for Determination Under the Guise of Modification Actions is More Burdensome on Judicial Economy Than Simply Resolving the Issue

Shannon places an outsized emphasis on a concern about parents coming to the court with disagreements about "football, music lessons, religious services, school activities, birth control and a myriad of other parental disagreements."[2] Appellee's Brief at p. 18. Shannon's argument is fundamentally a criticism of the policy decision by the Iowa legislature to include "extracurricular activities" as one of the major parenting decisions listed in Iowa Code section 598.1(3). Whether including extracurricular activities alongside educational decisions or medical decisions is good or bad policy is not a basis on which to determine whether the court has an obligation to protect and enforce a joint legal custodian's right to equal participation. Some states, like Colorado, do not include extra-curricular activities as a major parenting decision. *See*, *e.g.*, C.R.S. § 14-10-130 (1) (". . . the person or persons with responsibility for decision-making may

[2] Shannon also claims that divorced parents have no fewer rights than other parents. Appellee's Brief at p. 18. This ignores an important difference: when a parent in a marriage takes unilateral action to, for example, vaccinate the parties' children, they are not at risk of being found in contempt of court and potentially having to spend time in jail or pay a fine as a result. How divorced parents have to enforce their rights is vastly different than married parents.

determine the child's upbringing including his or her education, health-care, and religious training[.]"). Iowa does include extracurricular activities, and in the unlikely event these disputes were to become a problem for the courts—even though they never have before—it is ultimately up to the legislature to take action to resolve this issue by amending the statutory language. Until then, the court is required to do what the statutory language demands of it—protect Mary's rights as joint legal custodian.

Still, setting Shannon's policy arguments aside, Shannon's alternative would be that, to resolve these issues, parties file more costly, dramatic, and time-consuming modification actions. Unfortunately, in many Iowa counties, modification hearings are being scheduled between one to two years (or more) into the future and, if contested, require one to three day trials to obtain relief. If floodgates were theoretically going to "open" like Shannon believes, having them open through petitions for modification will send a much larger deluge of litigation to fill court dockets than taking the more narrow, nimble approach to simply addressing Mary's Application.

Petitions for modification are not practical or efficient to resolve these meaningful, but narrow disagreements. Petitions for modification are also not necessary given that the court has the ability to simply clarify the terms of the original decree. See *In re Marriage of Teepe*, 271 N.W.2d 740, 742

(Iowa 1978) (explaining that a party can seek an additional determination from the original decree, as opposed to a modification, thereby making the determination a matter within the original dissolution proceedings). A more sensible, practical solution might be something more akin to either a one-hour evidentiary hearing with the option to proceed on pleadings, should both parties agree, or a hearing much like how temporary orders hearings function around the state—a short 30 to 60 minute oral argument based on affidavits and attachments submitted by the parties on the issue. These hearings can be scheduled more quickly, be resolved more promptly, and address parties' needs without adding needless modification actions to courts' dockets—particularly when the parties are not seeking a modification.

Both parties agree that the legal system is not designed to offer remedies to all matters of life; however, it is designed to address many important matters, and the one Mary has asked the court to resolve is an important one. Although Shannon does not appear to believe it is possible for the court to "make a decision concerning the best interest of the child where each parent has legitimate arguments," that is precisely what Iowa courts do every single time they hear a custody matter. Appellee's Brief, p. 18. The issue presented to the court is narrower and simpler than many tasks

parents ask of the court. If addressing Mary's Application creates new policy questions for how these matters should be handled moving forward, then the legislature can choose whether or not it feels the need to make changes. For now, the court is obligated to step in as objective arbiter and address Mary's Application.

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.

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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 proof brief complies with the type-volume limitation of Rule 6.903(1)(g)(1) because this brief contains 3,632 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