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 COURT OF APPEALS DECISION
DATED JUNE 21, 2023

RESISTANCE TO APPLICATION FOR FURTHER REVIEW

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STATEMENT RESISTING FURTHER REVIEW

When the court of appeals issued its June 21, 2023, decision, it confirmed what many family law attorneys around Iowa already knew to be true: that Iowa Courts have the authority and obligation to enforce and protect the rights of joint legal custodians when those custodians reach a genuine impasse about a major parenting decision. In this case, the court of appeals held that equal participation really means *equal* participation—that one parent cannot veto the other parent on any of the major parenting decisions set forth in Iowa Code sections 598.1(3) and 598.41(5)(b). This is consistent with the statutory text and Iowa case law. The court of appeals understood that our system should not require one party to prove a significant change in circumstances occurred to enforce statutory rights to jointly parent their child; nor should a parent be forced to risk contempt of court to exercise those rights. Rather, a parent can bring that impasse to the district court knowing that a neutral decision-maker will listen to the parties and enter an order reflecting the best interests of those parties' children. This is the only way to give real meaning to the statutory guarantee of "equal participation."

Nothing about the court of appeals decision is unusual or strange, as Shannon insists in his Application for Further Review—the decision is one that is properly rooted in the text of the Iowa Code and case law; it reflects the unique needs of families, the challenging dynamics of family law, and parents' access to Iowa courts to expeditiously resolve disputes affecting the most vulnerable among us: children. The court of appeals decision does *not* interfere with parents' rights, as Shannon claims; instead, it reinforces and bolsters those rights by making sure one parent cannot veto the other, simply by being obstructionist. There is nothing unusual about a decision which holds that equal actually means *equal*.

Shannon begins by basing his request for further review on three grounds: 1) an alleged conflict with case law concerning the unbundling of parental rights, 2) an alleged conflict with prior decisions regarding creation of new causes of action by failing to leave the decision to the Iowa legislature or the supreme court, and 3) that the court cannot act as "judicial tiebreaker" because the legislature reserved parental rights to parents, not the court. Each of these arguments is unpersuasive and will be addressed below.

First, it does not follow from the court of appeals' decision that there is any conflict with past cases discussing unbundling of parental rights

because this case has nothing to do with unbundling rights. Mary does not dispute that Iowa case law forbids the unbundling of custodial rights; however, Mary is not seeking to unbundle anything. In fact, Mary's entire Application is specifically premised on the fact that the parties are joint legal custodians, have a right to equal participation, and cannot veto one another. If Mary were seeking to unbundle rights, she would have filed a modification requesting to have sole decision-making power over medical decisions moving forward, which she has not done. Instead, Mary acknowledges that, as a joint legal custodian, she cannot (or more accurately, *should not*) act unilaterally, and neither can Shannon. Furthermore, a decision in Mary's favor does not mean either party ceases to be a joint legal custodian—no rights have been unbundled. A single court decision on a single impasse over a single, narrow topic does not indefinitely award either party tie-breaking authority over the other. Shannon's framing of this issue as "unbundling" is a red herring and should be rejected.

Second, the decision does not conflict with prior court of appeals' decisions regarding the creation of new causes of action, because *it did not create a new cause of action*. Filing applications for determination has been how many Iowa Courts have been deciding these issues already, and the

court of appeals simply confirmed as much. *See, e.g., 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). What Mary is asking the Court to do is simply to enforce the terms of the Decree. *See, e.g., In re Marriage of Morris*, 810 N.W.2d 880, 886 (Iowa 2013) (recognizing that a district court retains authority to interpret and enforce its prior decrees); *In re Marriage of Heath-Clark and Clark*, 2016 WL 275779, *3 (Iowa Ct. App. 2016) (explaining that a court retains jurisdiction to enforce its decree); *In re Marriage of Cerwick*, 2003 WL 1043505, *2 (Iowa Ct. App. 2003) (explaining that a court retains jurisdiction after a final order to enforce the judgment).

Finally, although the court of appeals' decision does raise an important question of law, this is a question that has been decided by the supreme court already. The court has an obligation to step in and break ties,

which it has recognized previously and which has been referred to as the "tie-breaker" designation. *Harder v. Anderson*, 764 N.W.2d 534, 538 (Iowa 2009) (recognizing the obligation to break ties); *Kocinski v. Christiansen*, 2021 WL 5106051, *4 (Iowa Ct. App. 2021) (calling the obligation the tie-breaker designation). Mary should not have to prove a substantial change in circumstances to enforce rights she already has as a joint legal custodian—to require as much would mean that Mary does not have a right to equal participation at all and render such language in the statute meaningless.

For these reasons, the court should not grant further review and should instead deny the review, thereby upholding the court of appeals decision reversing the district court's dismissal of Mary's Application for Vaccination Determination (Application).

ARGUMENT

I. THE PLAIN LANGUAGE OF IOWA CODE SECTION 598.1(3) REQUIRES THE COURT TO RESOLVE GENUINE IMPASSES 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).

"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*, 764 N.W.2d at 538 (emphasis added). This has been referred to as "the tie-breaker designation[.]" *Kocinski*, 2021 WL 5106051 at *4. The only way to ensure that neither party's rights are superior to the other is to ensure one parent cannot veto the other. The only way to ensure one parent cannot veto the other is to permit the parties to bring their 50-50 impasse to the court for resolution. Otherwise, one custodian "is at the mercy of the [other] joint legal custodian" who refuses to act. *See In re Marriage of Rigdon*, 2020 WL 7868234, *2 (Iowa Ct. App. 2020).

Shannon argues that the language of the statute forbids the court from breaking ties because the statute is—and by extension the legislature was—not *explicit* about the Court stepping in and breaking ties. Shannon spends multiple pages of his Application for Further Review on this point. *See* Application for Further Review, pp. 12, 16–17. Shannon is wrong, and the exact opposite is true. Iowa Code section 598.1(3) places an affirmative obligation on 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.

The byproduct of this statutory language guaranteeing that neither parent has custodial rights superior to the other (and 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 one and only way to ensure that neither parent has legal custodial rights superior to those of the other parent. Shannon has no answer for this because he is the party that stands to benefit from being obstructionist in this case. 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).

Additionally, Shannon argues that because the statute is not absolutely explicit about the court needing to step in to break these ties that the court lacks the authority to do so. This is also wrong for a number of reasons, which can be highlighted by way of example. 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 broad 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. The same is true here; although 598.2 is not explicit about breaking ties, this authority and obligation comes from language elsewhere in the Chapter—namely sections 598.1(3) and 598.41(5). Yet, by Shannon's logic, that the statute is "silent" should indicate the Court also lacks jurisdiction over modifications because the legislature did not explicitly say "and jurisdiction over modifications." This logic results in absurdities and an unworkable family law system. Clearly, the plain language of Chapter 598.1(3) imposes an affirmative obligation on the court to step in and resolve the exact problem Mary presented in her Application—otherwise, Shannon's custodial rights are superior to Mary's (as will be true of any parent who decides to be obstructionist on an issue).

II. THE DISTRICT COURT HAD INHERENT AUTHORITY TO RULE ON MARY'S APPLICATION

If the plain language of the statute was not persuasive enough, Iowa courts also have inherent authority to rule on certain issues. As the Iowa Supreme Court explained in *State v. Hoegh*:

> It is fundamental to our system of government that the authority for courts to act is conferred by the constitution or by statute. Yet, it is equally fundamental that in addition to these delegated powers, courts also possess broad powers to do whatever is reasonably necessary to discharge their traditional responsibilities. This type of judicial authority is known as inherent power, and it is derived from the separation of powers between the three branches of government, as well as limited by it. Inherent powers are necessary for courts to properly function as a separate branch of government[.]

632 N.W.2d 885 (Iowa 2001) (internal citations omitted). The Iowa Supreme Court has further explained that "[i]nherent powers are those that 'have been conceded to courts because they are courts. Such powers have been conceded because without them, they could neither maintain their dignity, transact their business, nor accomplish the purposes of their existence.'" *City of Sun Prairie v. Davis*, 595 N.W.2d 635, 640 (Wisc. 1999) (cited approvingly by the Iowa Supreme Court in *In re K.N.,* 625 N.W.2d 731, 734 (Iowa 2001)).

With respect to decisions related to custody and care of children, the "first and governing consideration of the courts is the best interests of the child." Iowa R. App. P. 6.904(3)(o). This consideration is so well-established that authorities need not even be cited in support of the proposition. *Id.* If Iowa courts lack authority to decide stand-alone disputes between joint legal custodians—as Shannon is asking—then not only will joint legal custodians not have their statutory guarantee of equal participation, but the court will be stripped of power that allows it to discharge its responsibilities and accomplish the very purpose of its existence. This cannot be correct. By exercising tie-breaking authority, the court is simply flexing its role as parens patriae—it is enforcing its duty to ensure every child within its borders receives proper care and treatment. *See In Interest of Dameron*, 306 N.W.743, 745 (Iowa 1981). In this case, the district court had inherent authority to ensure that, despite the parties' genuine disagreement, that the children's best interests were served. Permitting Iowa courts to refuse this duty could harm children in the future and will not elevate children's best interests to the forefront of the courts' considerations.

For example, consider a child who, due to a medical condition, lives in constant, overwhelming pain and who could receive a brand new, life-changing medication that will materially enhance the quality of that child's life, reducing the child's pain by 80% - 90%. The child's mother approves of administering the medication to the child, but the father disapproves because of his religious beliefs. The parties are joint-legal custodians and, besides administering this new medication, have otherwise managed the child's medical needs for a decade without issue. Does the mother have any recourse? Can she not present her argument to the court without requesting a full-blown modification? *Surely* she can because the court has the inherent authority to address this problem, and the mother should not be worried about potentially being on the receiving end of the father's looming effort to hold the mother in contempt. The child's best interests are at issue here, and if the court refuses to accept the case because it "lacks authority," the child will continue living a life in daily, agonizing pain. This is neither an acceptable framework, nor one that exists anywhere in our country, including Iowa.

III. THE FILING OF A PETITION WAS UNNECESSARY IN THIS CASE BECAUSE A PETITION WAS FILED—IN THE ORIGINAL DISSOLUTION PROCEEDING

One of Shannon's primary arguments is that the court lacks the authority to address Petitioner's 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). Shannon ignores the fact that a Petition *was* filed to initiate the dissolution of marriage proceeding. (App. 5 [Petition]). The court's authority was properly invoked to start the case in the first instance; what Mary has now asked the court to do is enforce the terms of the decree resulting from that Petition. The Decree, which incorporates the parties' settlement agreement, awards the parties joint legal custody. (App. 32 [Decree]; App. 10 [Stipulation]). Consequently, Mary is guaranteed a right to equal participation in medical decisions involving the children. Thus, Mary came to the court asking to enforce the provision granting her a right to equal participation in medical decisions by requesting a hearing on an issue where there is a genuine impasse. No petition needs to be filed because a cause of action already exists.

As yet a further example of why a petition need not be filed, parties with young children who get divorced regularly engage Iowa courts to

determine matters related to post-secondary education subsidies. The method by which many parties access the court for this purpose is through a motion or application. *See, e.g, In re Marriage of Saluri*, 2019 WL 4297877, *1 (Iowa Ct. App. 2019) (highlighting that the mother of a child filed a "motion" to establish postsecondary subsidy in a post-decree setting); *In re Marriage of McFadon*, 2018 WL 2085060, *1 (Iowa Ct. App. 2018) (mother filed an "application" in a post-decree setting). A Petition certainly need not be filed where nothing is being "modified." In this case, Mary was not seeking to modify anything, only to enforce her rights under the statute.

Furthermore, even if a "Petition" *was* required in this case (which it is not), our courts are not so rigid as to require magic word tests to trigger 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). Just because Mary's pleading was called an "Application for Vaccination Determination" does not render it an improper pleading in this specific set of circumstances.

IV. THE ORIGINAL DECREE WAS SILENT ON THE ISSUE AND THE PARTIES RESERVED JURISDICTION IN THE DECREE

The court of appeals correctly decided that a petition was not necessary in this case because Mary was requesting that the court examine an issue not clearly addressed in the parties' original Decree. Furthermore, even if the issue were addressed in the original Decree, the parties also reserved jurisdiction to address circumstances like the parties are currently facing: a genuine disagreement over a major parenting decision.

First, the court of appeals decision rightly explains that Mary did not request to modify the parties' custodial arrangement. This is because Mary did not want to modify the custodial arrangement. This is why Mary did not file a petition seeking to modify custody. However, "[p]arents cannot possibly conceive of every possible disagreement they may encounter and settle it during the initial custody proceedings. Nor will every dispute arise from the requisite change in circumstances to warrant a modification." Ct.

App. Dec., p. 4. In such circumstances, the court should examine the dispute as a matter not contemplated by the parties in their original dissolution proceedings. *See In re Marriage of Teepe*, 271 N.W.2d 740, 742 (Iowa 1978). Here, the parties did not contemplate what they would do in the event of a global pandemic as to whether they would vaccinate their children against such a unique phenomenon. Because the parties are joint legal custodians, their disagreement has to do with a topic over which they have equal participation, and because the parties did not contemplate this during the original dissolution proceeding, a petition for modification is not the appropriate procedural mechanism to resolve the matter—an application for determination is.

Second, even if, as the dissent points out, the parties' stipulation adequately addresses this topic by awarding the parties joint legal custody over "medical decisions," the parties nevertheless set forth a clear and specific dispute resolution procedure which contemplated invoking the court's jurisdiction to resolve impasses related to major parenting decisions—such as whether to vaccinate their children from COVID-19. *See* (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 a legal action to resolve major parenting disputes such as the one Mary presented to the District Court. The stipulation did not say "neither party shall initiate a modification proceeding." It says "neither party shall initiate any legal action regarding "medical treatment"." Whether the decree was silent on the issue or whether the parties explicitly reserved jurisdiction in the district court to resolve these disputes, the proper mechanism to invoke the court's authority would not be a modification petition unless the parties were actually seeking to modify the decree—it would be asking the court to go back into the original dissolution proceeding

(where a petition had already been filed and the parties explicitly reserved jurisdiction) to exercise its tie-breaking authority.

V. REQUIRING MODIFICATIONS INSTEAD OF APPLICATIONS FOR DETERMINATION WILL MORE NEGATIVELY AFFECT JUDICIAL ECONOMY THAN SIMPLY RESOLVING THE ISSUE

Shannon places an outsized emphasis on a concern about parents coming to the court with disagreements creating a "flood" of new cases. *See* Application for Further Review, n. 1. 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 or enforce the terms of the original decree. *See Teepe*, 271 N.W.2d at 742 (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 30-60 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 Final 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 deny Shannon's Application for Further Review and direct that the case be remanded 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 **July 20, 2023**, 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 4,209 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