

IN THE SUPREME COURT OF IOWA

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

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

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APPELLANT'S BRIEF AND  
REQUEST FOR ORAL ARGUMENT

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## Statement of Issues Presented for Review

**1. Standard of review and preservation of error.**

*Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988)

Iowa R. App. P. 6.907

*In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992)

*In re Marriage of Gensley*, 777 N.W.2d 705, 718-19 (Iowa Ct. App. 2009)

*In re Marriage of Dauterive*, No. 20-0382, 2021 WL 1017121, at \*1 (Iowa Ct. App. Mar. 17, 2021)

**2. The district court erred in having the minor child attend St. Ansgar rather than Riceville schools.**

**A. Legal principles governing a court's decision as to which school the minor child should attend when the joint custodians of that child disagree.**

Iowa Code § 598.1(3) (2023)

Iowa Code § 598.1(5) (2023)

Iowa Code § 598.41(1)(e) (2023)

*In re Marriage of Koffman*, No. 11-0895, 2012 WL 469959 at \*1 (Iowa Ct. App. 2012)

*Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson & Sanger, L.L.P.*, 764 N.W.2d 534, 538 (Iowa 2009)

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*In re Marriage of Frazier*, No. 22-0686, 2023 WL 4104024, at \*2 (Iowa Ct. App. June 21, 2023)

*Hemesath v. Bricker*, No. 09-1064, 2010 WL 446990 at \*4-\*5 (Iowa Ct. App. Feb. 10, 2010)

*In re Marriage of Thielges*, 623 N.W.2d 232, 237-238 (Iowa Ct. App. 2000)

**B. Under *Matteson*, the parent granted the minor child's physical care has the final decision as to where the child attends school; therefore, as between Katie and Gary, Katie's choice of Riceville should prevail.**

*Gould v. Alderin*, No. 22-0874, 2022 WL 16985434, at \*2 (Iowa Ct. App. Nov. 17, 2022)

*In re Marriage of Bakk*, No. 12-1936, 2013 WL 5962991 at \*2 (Iowa Ct. App. Nov. 6, 2013)

*In re Marriage of Laird*, No. 11-1434, 2012 WL 1449625, at \*2 (Iowa Ct. App. Apr. 25, 2012)

*Hemesath v. Bricker*, No. 09-1064, 2010 WL 446990 at \*4-\*5 (Iowa Ct. App. 2010)

*In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007)

*In re Marriage of Hoffman*, 867 N.W.2d 26, 33 (Iowa 2015)

*In re Marriage of Frederici*, 338 N.W.2d 156, 159 (Iowa 1983)

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Iowa Code § 598.41(5)(b) (2023)

**C. It is in M.N.L.'s best interests for her to attend the  
Riceville School District.**

*Hemesath v. Bricker*, No. 09-1064, 2010 WL 446990 at \*4-\*5 (Iowa  
Ct. App. 2010)



## **Routing Statement**

This case should be transferred to the Court of Appeals because no basis exists for the Supreme Court to retain this case for appellate review. *See* Iowa R. App. P. 6.1101. Further, this case should be transferred to the Court of Appeals because it involves questions that can be resolved by applying existing legal principles. *See* R. 6.1101(3)(b).

## **Statement of the Case**

### **Nature of the case**

Katie Vandewalker a/k/a Katie Venechuk, Petitioner-Appellant, and Gary A. Landherr, Respondent-Appellee, never married each other and are the parents of one minor child, M.N.L., born 2013. In May 2018, the district court entered an order adopting the parties' stipulation which granted the parties joint legal custody of M.N.L. while placing M.N.L. in Katie's physical care subject to Gary's visitation rights. (App at 17; App at 34.) This litigation now under appeal concerns the parties' dispute regarding where M.N.L. attends school – Katie wanted M.N.L. to attend Riceville where she resides, while Gary wanted M.N.L. to attend St.

Ansgar School District where he resides. After a trial, the district court chose St. Ansgar. Katie appeals.

### **Course of proceedings and disposition in district court**

Under the parties' 2018 custody order, the parties agreed that M.N.L. would attend school in St. Ansgar. (App. at 20 ¶1(d)(1).) If a party sought to change that school, "the party desiring to change the school district shall obtain prior Court approval."<sup>1</sup> (*Id.*) On July 22, 2022, Katie petitioned to modify the decree based upon the parties' inability to agree on where M.N.L. would attend school. (App. at 78.) Before Gary filed his answer, Katie moved the court to issue an emergency declaratory judgment so M.N.L. could switch school districts and enroll in the Riceville Community School District for the 2022-2023 school year. (App. at 83-84 ¶8-11.) The court denied that motion on August 22, 2022. (App. at 93.)

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<sup>1</sup> Their stipulation also provided that if a disagreement arises, "the parties agree to submit the question to a counselor/mediator for final resolution." (App. at 20-21 ¶1(f).) In 2020, the parties modified that provision to designate a parenting coordinator rather than a counselor/mediator to resolve the dispute. (App. at 61, 66.)

On September 23, 2022, Gary filed his answer denying Katie's petition. (App. at 96 ¶10.) At the time this litigation began, Katie lived in Riceville while Gary lived in St. Ansgar. The parties attempted to mediate on December 6, 2022, and failed to reach a settlement agreement. (App. at 98.)

Since the 2018 custody order, Katie married Ryan Vandewalker. They have a minor child together, A.V. born 2020. Katie has another minor child, K.V., who has Down Syndrome and was thirteen years old at the time of trial. Katie and Ryan's home is a mere minute and a half from the Riceville school where Katie's eldest child attends and where M.N.L. would attend. Ryan works for Howard County as a deputy sheriff and one of his job requirements is that he must reside in Howard County.

Prompting this litigation was Katie's observation that there had been a substantial change in circumstances as to M.N.L.'s education, desires, transportation, and familial education which warranted a modification and the inability for Katie and Gary to come to an agreement with the help of their parenting coordinator on June 9, 2022. (*See* App. at 83 ¶7.) Even though M.N.L. still

attends St. Ansgar schools, Katie has provided M.N.L.'s primary residence in Riceville. Because Gary refuses to permit M.N.L. to attend Riceville, M.N.L. has been commuting over an hour to attend school there about four days a week. (App. at 84 ¶10.)

The parties tried this matter to the honorable Blake Norman on April 20, 2023. (Tr. 1:all.) On April 24, 2023, the district court filed its "Order Following Modification Trial" (hereinafter "Order") and ordered that M.N.L. remain in the St. Ansgar School District and that Gary shall have the right to provide transportation for M.N.L. (App. at 106.) The court further found the request to change school districts was not a deliberate act by Katie to deprive Gary of his visitation since there would be no visitation change. (App. at 105.)

Katie filed a motion to amend pursuant to Iowa Civil Procedure Rule 1.904. (App. at 108.) Her motion stated that the part of the court's order regarding Gary providing transportation for M.N.L. as Katie requests conflicts with a previous partial stipulation, namely the parties' Partial Stipulation entered by the court on November 23, 2020. That Partial Stipulation states Gary

agrees not to meet with M.N.L. prior to the commencement of the school day on days when she is coming to school from her mother's residence. (App. at 60 ¶7.) Further, the Partial Stipulation set exchanges to occur at the Casey's store in the towns of the parties' respective residences. (App. at 60 ¶8.) The court declined to fully strike the portion of its ruling that conflicts with the previous language in its Order on May 16, 2023. (App. at 110.) The court did, however, change the ruling to state Katie is permitted to allow M.N.L. to ride the bus to and from her residence up to twice a week without requesting Gary to provide transportation. (App. at 110.) Katie then timely appealed. (App. at 113.) Gary did not cross-appeal. (*See generally* App. at 114.)

## **Statement of the Facts**

At the time of trial, M.N.L. was nine years old and attending third grade in the St. Ansgar School District. (Tr. 11:21, 13:2-5.) M.N.L. had attended St. Ansgar since preschool. (Tr. 13:3-5.) The parties have joint legal custody and Katie has primary physical custody of M.N.L. per the Stipulation and Decree entered on May 31, 2018. (Tr. 13:8-10; *see* App. at 17; App. at 34.) In May 2018,

Katie was living with her parents in Northwood, Iowa. (Tr. 37:15-18). Later, Katie moved to her brother's home in Grafton, Iowa, before moving into a rural home with her then-fiancé/now-husband, Ryan Vandewalker. (Tr. 56:7-10.) By the time of trial, Katie and Ryan recently moved to a home in Riceville, Iowa. (Tr. 11:22-23, 37:18, 56:7-10.)

Katie has two other children. Katie's eldest child was thirteen years old, and a Katie and Ryan have a two-year-old child together. (Tr. 11:19-21.) All three minor children live with her and Ryan in Riceville. (Tr. 11:17-18.) Katie and Ryan's residence is about a minute and a half from the Riceville school, where Katie's eldest child attends school and their youngest child will be attending the three-year-old preschool program in the fall of 2023. (Tr. 22:24-23:1, 15:1-20.)

Katie works part-time for her parent's catering business based out of Northwood, Iowa. (Tr. 92:21-23.) Ryan serves as a Deputy Sheriff for Howard County. (Tr. 12:17.) Gary has remained in St. Ansgar and has lived at the same address since M.N.L. was born. (Tr. 36:19-23.) Gary is self-employed selling electronics online

and does some part-time roofing in the summer months. (Tr. 58:11-13.) M.N.L. spends most of her time in Katie's care and goes to spend time with Gary every Tuesday until Wednesday and alternating weekends. (App. at 18.)

Katie's eldest minor child has Down syndrome and had been attending St. Ansgar schools until Katie felt the school was unable to deliver the education the child deserved. (Tr. 16:1-8.) Katie wished to find a school that was willing to accommodate the child's needs and IEP, and subsequently enrolled the child in the Riceville school. (Tr. 16: 1-14.) Katie testified at trial Riceville had welcomed her eldest child with open arms and has done "exceptionally well" there. (Tr. 16:13-16.)

Because M.N.L.'s elder sibling changed schools and her younger is set to begin attending in fall of 2023, M.N.L., who Katie testified is very close with and protective of her siblings, was "confused" by the fact that she does not get to ride the bus with them or attend the same school. (Tr. 16:21-17:8.) Further, M.N.L. has been "pick[ed] on" by classmates who tell her she cannot

continue to attend the St. Ansgar school if she lives in Riceville. (Tr. 19:9-22.)

Katie testified that M.N.L. must take an hour-long bus ride to get to and from her school in St. Ansgar. (Tr. 21:11-15.) That commute could be easily swapped for one that is a mere “minute and a half” by car. (Tr. 22:24-23:1.) M.N.L. has mentioned that she would like to ride her bike to school. (Tr. 22:24-23:4.) Katie further testified a switch in schools would not interfere with M.N.L.’s extracurricular activities like Girl Scouts, softball, and dance. (Tr. 26:15-24.)

There was some testimony regarding the rankings of both St. Ansgar and Riceville School Districts and it is true St. Ansgar ranks higher. (Tr. 28:3-13.) However, it was established St. Ansgar has fallen eighty-nine spots in the rankings since 2021 and lost many “quality” teachers to retirement. (Tr. 28:9-10, 144:20-22.) On the other hand, even with a decline in enrollment, Riceville moved up twenty-five spots in the rankings. (Tr. 117:22-25, 27:21-28:2.) Additionally, some of M.N.L.’s standardized test scores have dropped, she has a large class size, and her teacher admitted to



having too many kids to instruct and thus a limited ability to address the shortcomings of individual students. (Tr. 29:20-22, 30:6-18, 31:13-21, 32:4-8, 32:12-20.)

Overall, Katie testified the school district switch to Riceville would be in M.N.L.'s best interest because she will be able to get the help in school she needs and the education she deserves; she would be able to get to school more easily attend the same school as her two siblings. (Tr. 35:4-14.) Finally, M.N.L. has expressed that she wants to change schools. (Tr. 17:16-18.) Katie further mentioned she has no worries about a switch given M.N.L. has no trouble making friends and already has friends in Riceville that she met through dance, Girl Scouts, and in her neighborhood. (Tr. 34:6-11, 34:14-19.)

Gary testified that at trial was the first time he was made aware of Katie's concerns regarding M.N.L.'s education. (Tr. 38:6-9.) However, he then acknowledged he and Katie have issues communicating, which is something the trial court found as well as further evidenced by it stating there is a strong dislike between the parties. (Tr. 10-17; App. at 105.) He went on to say he does not have

any concerns about M.N.L.'s test scores and she has not told him she feels like she is not getting enough help. (App. at 188; Tr. 41:2-9, 41:13-16.) Gary also did not observe M.N.L. reacting to, nor did she make comments to him about wanting to change schools, after her older sibling did. (Tr. 44:17-18, 44:24-45:2.) However, Gary later testified that M.N.L. has made comments to him about Riceville schools having better lunches, wanting to go to school there, and wanting to go to school with her sisters. (Tr. 61:8-14, 101:14-17, 76:1-6.) He feels it is in her best interest to stay in St. Ansgar schools because she has great relationships with her teachers, because of her friends there, and because a change in her routine may cause M.N.L. to experience anxiety. (Tr. 75:18-23, 81:21-82:6.)

All other relevant facts are discussed in the argument section.

## Argument

M.N.L. has been described as friendly, outgoing, an “enjoyable ball of energy”, and overall, a happy child. (Tr. 116:4-7, 123:6-7, 129:15.) M.N.L. has no issue making friends and is often making new friends in her neighborhood, at school, and in her extra-curricular activities. (Tr. 34:6-8, 60:6-10, 77:9-15, 116:1-3, 125:15-17.) M.N.L. takes on a protective role for both of her siblings as she cares for them very much. (Tr. 17:6-15.) M.N.L. has also been vocal about wanting to go to school with her sisters. (Tr. 17:16-18, 18:15-16, 76:5-6, 101:14-25.)

In summary, Katie wanted the court to find it would be in M.N.L.’s best interest to switch to the Riceville School District. Gary wanted M.N.L. to continue to attend St. Ansgar schools. Katie is concerned with the education M.N.L. is receiving at St. Ansgar and feels the Riceville schools would be better suited to address M.N.L.’s educational needs. There was some discussion at trial between the parties’ attorneys regarding the standard to be used as a measure for whether the modification be granted. (Tr. 154:7-13.) The attorneys agreed there was some conflicting law regarding the

applicable legal standard. Katie argued that the lower change in circumstances applied but felt she could meet the higher burden. (Tr. 155:13-156:14.) Gary's claimed that neither standard had been met. (Tr. 156:21-157:1.)

It is in M.N.L.'s best interest that she be allowed to leave the St. Ansgar School District and attend school in the Riceville School District. Further, Gary's visitation schedule as to M.N.L. will not be affected by the change in schooling given the change has no bearing on his midweek visit and alternating weekends. Thus, the court wrongly accepted Gary's argument that it would not be in M.N.L.'s best interest to attend school in Riceville. This court should modify the lower court's order and allow M.N.L. to change school districts and be able to attend school in Riceville.

#### **1. Standard of review and preservation of error.**

Actions concerning custody orders between never-married parents is tried in equity and is de novo. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988). Iowa's appellate courts give weight to the district court's factual findings and credibility determinations but are not bound by them. *Id.*; Iowa R. App. P. 6.907. "Prior cases

have little precedential value, except to provide a framework for analysis, and we must base our decision on the particular facts and circumstances before us.” *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

Katie raises the error regarding the district court’s decision of where M.N.L. should attend school. The parties tried and the district court decided the issue, so that issue is preserved for review. *See In re Marriage of Gensley*, 777 N.W.2d 705, 718-19 (Iowa Ct. App. 2009) (holding that an issue not presented to the trial court will not be considered for the first time on appeal); *see also In re Marriage of Dauterive*, No. 20-0382, 2021 WL 1017121, at \*1 (Iowa Ct. App. Mar. 17, 2021) (listing several cases where error was not preserved).

**2. The district court erred in having the minor child attend St. Ansgar rather than Riceville schools.**

As M.N.L.’s physical custodian, Katie has final say as between herself and Gary as to where M.N.L. attends school. Katie’s choice is Riceville. Having M.N.L. attend Riceville is in M.N.L.’s best

interests. This court should reverse and order that M.N.L. should attend school in Riceville.

**A. Legal principles governing a court’s decision as to which school the minor child should attend when the joint custodians of that child disagree.**

Parents who are joint legal custodians have a spectrum of rights and responsibilities including, but are not limited to, equal participation in decisions affecting their child’s education. Iowa Code § 598.1(3) (2023); *see also* §§ 598.1(5), 598.41(1)(e) (“Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to ... educational ... records.”); *see In re Marriage of Koffman*, No. 11-0895, 2012 WL 469959 at \*1 (Iowa Ct. App. 2012) (criticizing a parent, who shared physical care with the other, for unilaterally deciding where the child attended preschool). Courts are the final arbiter when joint custodians disagree on issues concerning their child. *Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson & Sanger, L.L.P.*, 764 N.W.2d 534, 538 (Iowa 2009); *see Christy v. Lenz*, 878 N.W.2d 461, 465 (Iowa Ct. App. 2016) (holding that a party “need not show a change in

circumstances, material or substantial, in order for the district court to clarify the terms of the joint legal custody provision of the paternity decree”). Iowa’s courts have confirmed that “educational decisions fall within this category” including school choice. *In re Marriage of Comstock*, No. 20-1205, 2021 WL 1016601 at \*2 (Iowa Ct. App. Mar. 17, 2021); *In re Marriage of Bakk*, No. 12-1936, 2013 WL 5962991 at \*2 (Iowa Ct. App. Nov. 6, 2013); *see In re Marriage of Laird*, No. 11-1434, 2012 WL 1449625, at \*2 (Iowa Ct. App. Apr. 25, 2012). Thus, this is a case where joint custodians are unable to reach a mutual resolution to an issue that they have equal participation in making.

When a court makes the final determination between disagreeing parents concerning their child’s school, the court chooses which school would serve the child’s best interests. *Gaswint v. Robinson*, No. 12-2149, 2013 WL 4504879, at \*5 (Iowa Ct. App. Aug. 21, 2013) (citing *Harder* and concluding the district court properly decided the school based on the best interests of the child); *see In re Marriage of Frazier*, No. 22-0686, 2023 WL 4104024, at \*2 (Iowa Ct. App. June 21, 2023) (reversing and remanding with

instructions that the district court determine whether a child should be vaccinated “consistent with the children’s best interests”). Further, when a court considers “any change in schools [it] ‘must be weighed with all the other relevant conditions affecting physical care,’ in an action seeking modification of physical care.” *Hemesath v. Bricker*, No. 09-1064, 2010 WL 446990 at \*4-\*5 (Iowa Ct. App. Feb. 10, 2010) (citing *In re Marriage of Thielges*, 623 N.W.2d 232, 237-238 (Iowa Ct. App. 2000) (holding that Iowa courts disapprove of decrees that specify that a child must reside in a specific community or attend a specific school)).

**B. Under *Matteson*, the parent granted the minor child’s physical care has the final decision as to where the child attends school; therefore, as between Katie and Gary, Katie’s choice of Riceville should prevail.**

This is not a dispute between two parents who have joint physical care of M.N.L.<sup>2</sup> *Cf. Gould v. Alderin*, No. 22-0874, 2022 WL

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<sup>2</sup> The difference between joint physical care and one parent having physical care is:

[T]he parent with primary physical care has the responsibility to maintain a residence for the child and has the sole right to make decisions concerning the child’s routine care. *See generally id.* § 598.1(7). The



16985434, at \*2 (Iowa Ct. App. Nov. 17, 2022) (parents with *joint legal and joint physical care* arguing over the child’s daycare); *Bakk*, No2013 WL 5962991 at \*2 (parents with *joint legal and joint physical care* arguing over the child’s school); *Laird*, 2012 WL 1449625, at \*2; (same); *Hemesath v. Bricker*, No. 09-1064, 2010 WL 446990 at \*4-\*5 (Iowa Ct. App. 2010) (same).

In 2018, the court granted Katie physical care M.N.L., which has remained unchanged. (App. at 17; App. at 34.) As “the parent with primary physical care[, Katie] has the responsibility to maintain a residence for” M.N.L. *In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007). Extending that principle, the Iowa Supreme Court held that “the parent having physical care of the children must, as between the parties, have the final say concerning where [the children’s] home will be.” *In re Marriage of Hoffman*,

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noncaretaker parent is relegated to the role of hosting the child for visits on a schedule determined by the court to be in the best interest of the child.

*In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007); see Iowa Code § 598.1(7) (2023).

867 N.W.2d 26, 33 (Iowa 2015) (quoting *In re Marriage of Frederici*, 338 N.W.2d 156, 159 (Iowa 1983)).

With those foundational principles guiding a court's resolution of disputes between parents, the court of appeals held that "when the parties [are] unable to agree on which school, the final say on the subject should be with the parent having physical care of the children." *In re Marriage of Matteson*, No. 16-0401, 2017 WL 361999, at \*3 (Iowa Ct. App. Jan. 25, 2017). *Matteson* governs this case.

In *Matteson*, Taylor and Cara fought over where their children should attend school. *Id.* The court of appeals wrote:

[T]he district court ruled, "As the primary care parent, Cara will have the final say as to where the children attend school." Taylor states that as a joint legal custodian of the children, he is entitled to "equal participation in decisions affecting the child[ren]'s legal status, medical care, education, extracurricular activities, and religious instruction." *See* Iowa Code § 598.41(5)(b).

One of the areas of contention between the parties was where the children would attend school. Taylor wanted the children to go to school in the Manchester school district, where the oldest child had been attending preschool; Cara wanted the children to attend school in Marion, where she was living. Iowa Code section 598.41(5)(b) grants both joint legal custodians with rights and responsibilities to equal participation in

decisions affecting children’s education. Thus, Taylor was entitled to be consulted about where the children attend school; but *when the parties were unable to agree on which school, the final say on the subject should be with the parent having physical care of the children — Cara. See Hoffman*, 867 N.W.2d at 33, 35-36 (finding the physical-care parent should have the final say concerning where the children’s home should be, including which school the children should attend). We affirm the court’s ruling Cara should have the final decision as to where the children attend school.

*Matteson*, 2017 WL 361999, at \*3 (emphasis added). Because Katie is the physical care parent and responsible for providing M.N.L.’s primary residence, Katie has the final say as to where M.N.L. attends school – Riceville. *See id.*

**C. It is in M.N.L.’s best interests for her to attend the Riceville School District.**

To confirm that Katie has “final say” where M.N.L. attends school, the court must determine whether switching schools from St. Ansgar to Riceville is in M.N.L.’s best interests. *Hemesath*, 2010 WL 446990 at \*4-\*5. The district court wrongly determined that keeping M.N.L. in St. Ansgar was in M.N.L.’s best interest because it did not apply *Matteson*. With *Matteson* providing that Katie has the “final say” regarding where M.N.L. attends school, the district

court should have evaluated whether switching to Riceville was in M.N.L.'s best interests. It is.

M.N.L. is not getting the education she deserves in the St. Ansgar School District. In her most recent year, third grade, she was failing to meet grade-level expectations more so than in previous years. (App. at 149; Tr. 29:8-22.) Katie attended M.N.L.'s conferences in March of 2023 to express her concerns regarding M.N.L. not meeting third-grade benchmarks and learned that M.N.L.'s teacher had too many students to accurately observe, track, and address learning issues or concerns. (App. at 154; Tr. 30:2-18.) Further, at the time of trial, the lower-than-normal test scores and missed benchmarks from December 2022 had not yet been addressed by M.N.L.'s teachers. (Tr. 35:12-18, 179:12-180:13.)

M.N.L.'s extracurricular activities would not be interfered with should she change school districts and attend Riceville schools. M.N.L. would still be allowed to participate in dance, softball, and Girl Scouts in both St. Ansgar and Riceville. (Tr. 26:15-24, 115:3-14.) She would be able to easily make new friends in the Riceville schools and already knows children there from her dance classes,

Girl Scouts, her Riceville neighborhood, and who are friends with her older sibling. (Tr. 34:12-20.) Riceville is also smaller than St. Ansgar, with Riceville having class sizes of 23 to 25 rather than the 60 in third grade at St. Ansgar. (Tr. 32:12-24, 35:8-11, 103:13-16.) While the St. Ansgar School District is ranked higher than the Riceville School District, St. Ansgar has fallen some 89 positions in the state's ranking of the districts while Riceville has risen in the rankings by 25 spots. (Tr. 27:21-28:13, 182:7-15.) Further, St. Ansgar's middle school has lost a lot of "quality" teachers to retirement. (Tr. 144:20-22.)

St. Ansgar is a better school district on paper but continuing to go to St. Ansgar schools is not in M.N.L.'s best interest given her larger class size, the lack of assistance and aid from her teachers, her siblings attending Riceville schools, her desire to attend Riceville schools, and the absence of any disruption to her activities and relationships in St. Ansgar should she be able to attend Riceville schools. The benefits of staying in the St. Ansgar School District do not outweigh the drawbacks of her remaining there, with the biggest being the potential harm being done to her

education and to her future. M.N.L. deserves to be set up for success, and that includes getting an education that meets her needs. Additionally, if it is discovered that M.N.L. did have special educational needs at a future date, St. Ansgar School District would not be able to provide more resources and aid for her as evidenced by the school's unsatisfactory handling of M.N.L.'s older sibling's special needs as it relates to her Down syndrome and IEP. (Tr. 16:1-16.)

It is in M.N.L.'s best interests to be able to attend the Riceville School District, which can better cater to her needs and ensure she receives the individualized support and attention she requires to receive the education she deserves. In attending Riceville schools, she will still be able to participate in all her activities, spend the same amount of time with Gary in St. Ansgar, and maintain relationships with friends in St. Ansgar during that time.

As to getting to and from school, M.N.L. currently rides the bus to get to school approximately twenty-one miles away in St. Ansgar, resulting in a commute of over an hour both at the beginning *and* end of the day. Both Katie and Gary expressed some

frustration with her being on the bus for that long every day. (Tr. 21:11-23, 100:16-22.) On the other hand, the Riceville school is a mere one and a half minutes from Katie's home in Riceville, a commute that is much shorter and would satisfy M.N.L.'s request to be able to ride her bike to school. (Tr. 22:24-23:4, 35:8-11, 115:19-25.)

The only reason to have M.N.L. continue to attend St. Ansgar schools is to maintain the status quo. However, M.N.L.'s desire to change schools, the desire to go to the same schools as her siblings, the ability to bike to school and absence of an hour-commute both ways, the individualized education and smaller classes, the ability to continue to spend the same amount of visitation with her father and continue to participate in her extra-curricular activities, and her ability to make new friends easily all support a finding that it is in M.N.L.'s best interest that she be able to attend school in Riceville. Maintaining the status quo in the face of substantial and material changes is an insufficient reason to force M.N.L. to remain at a school that does not meet her educational needs nor is a school that she wants to continue to attend. The detrimental aspects of

M.N.L. remaining in St. Ansgar schools do not outweigh the benefits.

The paramount consideration in any child custody matter is the best interests of the child. Ensuring a child receives the education they require is an essential component of a child's well-being and development. M.N.L.'s education and academic progress is of the highest importance and having her remain in a school district that is failing to acknowledge or address her needs will cause irreversible harm in the long run. M.N.L. is not getting the education she deserves, and her struggles are going unaddressed in the St. Ansgar School District.

Transferring M.N.L. to the Riceville School District would likely result in her getting the additional help and assistance she requires and allow her to thrive in an environment with smaller classes and more individualized help from teachers and faculty. M.N.L. already has friends attending Riceville schools and almost every witness who knows M.N.L. testified she is an outgoing, energetic child who has no trouble making new friends and that she does so often. As to M.N.L.'s friends in St. Ansgar, she will still be



able to maintain those relationships in her activities and when she is in her dad's care. She will have those relationships and develop new ones in a school that is able to provide her with a better, more individualized education. M.N.L. needs more from her educators and the St. Ansgar School District has failed to provide her with the attention and assistance she needs. M.N.L. will benefit greatly from being able to attend Riceville schools, and it is in her best interest to do so by looking at the educational, familial, and social benefits.

Because a court's decision as to which school M.N.L. should attend is based on M.N.L.'s best interests, it should prioritize her education and help to ensure she builds a strong foundation upon which her future rests. The district court erred in deciding not to require M.N.L. to switch school districts. M.N.L. is not thriving in St. Ansgar and would do better in Riceville. At M.N.L.'s young age, ensuring she is set up for success begins with helping her receive an education that fits her needs and, at the end of the day, she will get that in the Riceville School District.

## Conclusion

This court should:

1. modify the district court's Decree to allow for M.N.L. to 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,

/s/ Andrew B. Howie

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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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/s/ Andrew B. Howie

Signature

December 14, 2023

Date