IN THE SUPREME COURT OF IOWA

KATIE VANDEWALKER, F/K/A KATIE VENECHUK,	)	
Appellant-Petitioner,	)	**S.C. No. 23-0826**
v.	)	**WORTH COUNTY CASE No. DRCV012527**
GARY LANDHERR,	)	
Appellee-Respondent.	)	

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

AMICUS CURIAE BRIEF

Brad Bonner, AT0008983
IOWA LEGAL, PLC
1317 Broadway St.
P.O. Box 278
Denison, IA 51442
(712) 263-4245
brad.bonner@iowalegal.law
ATTORNEY FOR AMICUS CURIAE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Statutes

Authoritative Case Law

Persuasive Case Law

Procedural Rules

IDENTITY OF AMICUS CURIAE AND ITS INTEREST IN THE ABOVE CAPTIONED CASE

The Amicus Curiae is IowaFathers. IowaFathers is an Iowa Nonprofit corporation who provides educational services, attorney referrals, coaching services to parents on communication regarding children and other parents. IowaFathers is also involved in legislative efforts where they lobby for the best interests of children. *In re Marriage of Frazier*, 1 N.W.3d 775 (Iowa 2024), is certainly a case of first impression that our Supreme Court has decided. Elements of this case are being considered in the above captioned case as to how to better define the Court's interpretation of the law. As a Nonprofit with the best interests of the child as its "guiding star" in its journey, IowaFathers has had the fortune to see many parents and cases as it has affected thousands of children in our State and others. We at IowaFathers believe that as parents who have endured difficult, costly and arduous custody cases, it is our duty now to promote healing of these families and to do our best to remove the acrimony, the negativity, and the bitterness so that all of us, especially our children can heal. This case certainly has the potential we believe to upset some basic tenets of the best interests of children with regards to *continuity and stability of care*. It is our hope that our Supreme Court, for our great State of Iowa will consider our words in this Amicus Curiae Brief.

COST(S) AND WORK ASSOCIATED IN THE PREPARATION OF THIS AMICUS CURIAE BRIEF

Iowa R. App. P. 6.906(4)(d) states the following:

> "A statement that indicates whether a party's counsel authored the brief in whole or in part, indicates whether a party or party's counsel contributed money to fund the preparation or submission of the brief, and identifies any other person who contributed money to fund the preparation or submission of the brief."

The author of this brief is the Amicus Curiae and their Counsel, Attorney Brad Bonner. The costs of this brief and time are completely absorbed by the amicus curiae and its attorney. The only parties who have contributed time and money to this endeavor are the President of IowaFathers, Kurtis Bower, a paralegal, and Attorney Brad Bonner.

SUMMARY OF ARGUMENT

This brief argues that the Iowa Supreme Court should uphold the principle that significant decisions affecting a child's welfare, such as changes in schooling, fall within the court's jurisdiction as the ultimate arbitrator when joint custodians cannot agree in maintaining the court's dual duty to preserve the statutory right to equality of joint custodians and the well established principle of best interest of the child. The recent decision in *In re Marriage of Frazier* emphasized the necessity

for court intervention in disputes between joint custodians, setting a precedent that should be applied to the current case. The mother, in this case, did not have the authority *In re Marriage of Hansen* to unilaterally change the child's school over the father's objections and the court had proper subject matter jurisdiction to resolve the dispute. This brief argues that the court must serve as the ultimate arbitrator in such disputes to protect the child's best interests and to maintain the equality between joint custodial parents in all matters contemplated by the legislature in .

ARGUMENT

1. The Court of Appeals did not err by applying *In re Marriage of Frazier*, 1 N.W.3d 775 to the above captioned case by requiring most modifications to end joint legal custody and to award sole legal custody before the Trial Court may grant a modification.

The immediately relevant information was the Court of Appeals majority's findings in the above captioned case are as follows:

> "In 2019, Katie moved with the child to Riceville to live with her new husband. Gary continued to live in St. Ansgar. In 2021, Katie moved her oldest child out of St. Ansgar schools into the Riceville school district. Katie also wanted her child with Gary to attend school in Riceville, but Gary opposed changing the child's school. When mediation failed, Katie petitioned for modification of the custody decree, seeking to move the child to the Riceville school district. The district court denied Katie's petition, determining that circumstances

> had not changed enough to justify changing the child's school district and changing schools was not in the child's best interests. Katie appeals."

Then the majority's statements further down in the majority's ruling states the following:

> "Because Katie filed a modification action, she met that part of *Frazier*'s requirement for invoking the court's authority to address the parties' dispute. However, *Frazier* also dictates that modifying the decree to resolve a dispute over one of the five legal-custody issues requires the party seeking modification to prove not only a material and substantial change of circumstances, but that the filing party should receive sole legal custody. *Id*. at 781-82. The filing party's failure to seek modification to receive sole legal custody "doom[s] any petition at the outset." *Id*. at 782. Here, Katie never sought modification to receive sole legal custody—which she would need to make the school-enrollment decision unilaterally—so her petition is similarly doomed. For this reason, we affirm the district court's decision to dismiss Katie's modification petition. While our reason for reaching the decision to dismiss the petition differs from that used by the district court, we note that the district court did not have the benefit of *Frazier* when it reached its decision, so we intend no criticism of the court in our decision here. Likewise, we mean no criticism of the parties, as they also did not have the benefit of *Frazier* when choosing their courses of action."

However, now there is the dissent of the Court of Appeals Judge, the Honorable Samuel Langholz. Katie in her Statement Supporting Further Review in her Application for a Supreme Court Further Review, states the following:

> "Second, if *Frazier* is to be expanded to require quarreling parties to petition to modify legal custody whenever they disagree on an existing provision of their custody order, then "the supreme court [should] extend *Frazier* and make this even bigger change to the statutory and equitable authority of Iowa's courts rather than [the court of appeals] making that leap[,]" as Judge Langholz stated. (Ct. App. Ruling at 6 (Langholz, J., dissenting)); *see* R. 6.1103(1)(b)(2) (providing that further review is justified when the "court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court"); see also R. 6.1103(1)(b)(3) (justifying further review when the "court of appeals has decided a case where there is an important question of changing legal principles").)"

What Katie and Judge Langholz overlooked very important and relevant facts here that appear in the record:

1. Katie filed a Petition for Modification on July 22, 2022.
2. Katie has lived in Riceville since 2019.
3. Katie did not file for Court intervention for approximately three (3) years.
4. Katie's parents' work and live in Northwood, Iowa.
5. Katie drives from Riceville to Northwood, with the most direct and shortest route through St. Ansgar to work for her parents.
6. Katie appeared to intentionally withhold N.M.L. from visitation with Gary multiple times showing an intent that is at odds with the statutory requirement for the "opportunity for maximum continuous

physical and emotional contact possible with both parents." Iowa Code § 598.41(1)(c)

The Supreme Court's statements in the majority opinion of *Frazier* in the analysis are key and unavoidable. It states as follows:

> "Similarly, the issue before us is whether Mary properly invoked the district court's authority by filing an application for determination instead of a petition to modify the parties' decree. On plain language alone, Mary failed to properly commence this action because our rules of civil procedure are clear that "[f]or all purposes, a civil action is commenced by filing a *petition* with the court." Iowa R. Civ. P. 1.301(1) (emphasis added). But Mary argues she should not be subject to a "magic word" test and the district court's authority 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)." In doing so, Mary overlooks the meaning of "joint legal custody" under Iowa Code section 598.1(3).
>
> As joint legal custodians, "neither parent has legal custodial rights superior to those of the other parent." Iowa Code § 598.1(3). Instead, they are entitled to *"equal participation in decisions"* affecting their children's "legal status, medical care, education, extracurricular activities, and religious instruction." *Id*. (emphasis added). "Medical care" includes vaccinations. *See Armstrong v. Curtis*, No. 20-0632, 2021 WL 210965, at *4 (Iowa Ct. App. Jan. 21, 2021) ("[T]he parties should be able to work together on medical issues such as vaccinations."). This statutory definition treats joint custody as an all-or-nothing proposition that "leaves no room for a parceling of rights." *In re Marriage of Makela*, 987 N.W.2d 467, 471 (Iowa Ct. App. 2022). Thus, "[w]hen a court grants one parent a greater share of the legal rights subsumed within the definition of joint legal custody, ... the award is one of sole legal custody rather than joint legal custody." *Id*. Effectively, Mary is asking the district court to diminish—in one area— Shannon's right to equal participation in a

> decision affecting the children's medical care." *In re Marriage of Frazier*, 1 N.W.3d 775, 779 (Iowa 2024).

The Court of Appeals' decision in this case is firmly grounded in the bedrock principle established in *In re Marriage of Frazier*: joint legal custody in Iowa operates on an "all-or-nothing" basis. Any attempt by one parent to unilaterally make major decisions affecting the child, such as changing their school district, fundamentally undermines the equal rights afforded to both parents under a joint legal custody arrangement and potentially jeopardizes the child's best interests.

In the present case, Katie's desire to enroll the child in a different school district without first seeking a formal modification of the joint legal custody arrangement or obtaining Gary's consent represents a clear departure from the cooperative spirit that joint custody demands. Iowa Code § 598.1(3) explicitly states that joint legal custody entails "equal participation in decisions" affecting the child's education. Katie's unilateral action disregards this statutory mandate and infringes upon Gary's right to have an equal voice in such a crucial decision. It is well within the district court's jurisdiction that Katie's relocation to another town and subsequent remarried *could* be considered a substantial change and modify the decree, but it chose not to. In applying the best interest principle the court is well within its rights when factors it considers, such as the geographical proximity or

presence of a biological, joint custodian continues to live in the same town the child has attended school.

> The Frazier court's pronouncement is particularly relevant here:
> "[W]hen a court grants one parent a greater share of the legal rights subsumed within the definition of joint legal custody, ... the award is one of sole legal custody rather than joint legal custody."

Katie's attempt to unilaterally change the child's school, a decision that falls squarely within the realm of "legal rights subsumed within the definition of joint legal custody," effectively seeks to elevate her own decision-making authority above Gary's, thereby undermining the joint custody framework. Such an action not only disregards the legal rights of the other parent but also risks disrupting the child's life and compromising their overall well-being.

Moreover, Katie's considerable delay in seeking court intervention, coupled with her documented history of attempting to limit Gary's access to the child, raises serious concerns about her willingness to cooperate and act in the child's best interests, as mandated by Iowa Code §§ 598.1(1) and 598.1(3). The "best interests of the child" standard, as defined in Iowa Code § 598.1(1), places a premium on stability and continuity. Uprooting the child from their established school and community could have significant detrimental effects on their emotional well-being and academic performance, thereby undermining their best interests.

Iowa Code § 598.1(3) states as follows:

> "*"Joint custody"* or *"joint legal custody"* means an 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."

What further supports this is *Frazier* Court's statement in the majority opinion that reads as follows:

> "Practically, this all-or-nothing statutory definition of joint legal custody tends to favor the status quo. The situation simply remains static until the parents can either reach a mutually agreeable course of action together or modify their custody agreement. Yet, Mary did not file a petition to modify the parents' status as joint legal custodians." *In re Marriage of Frazier*, 1 N.W.3d at 779.

We acknowledge that proximity is grounds to modify a custody decree so long as it could not have been contemplated before by the Court, and if one or more of the parties did not *waive* their right to modification. *Added for emphasis*. You're able to see this in two locations in the code: Iowa Code §§ 598.21D and 598.41(3)(h). Now, Iowa Code § 598.41(3)(h) is in subsection 3 of section 598.41 and that is the subsection used to determine custody to be completely transparent. However, we would hold that Katie, by common law doctrine of *estoppel by acquiescence* waived any right to modification of the schools for the parties' minor child, M.N.L. Katie had lived in Riceville since 2019 and did not file the above

action until July 2022. Recognizing that there were other remedies that must have been exhausted first, it is still our position that Katie waived any claim of right to modification because of the length of time she allowed to pass before making any reasonable attempt to change the circumstances.

While the dissenting opinion in the Court of Appeals raises legitimate concerns about the potential implications of the decision, the majority's interpretation is firmly anchored in the clear language of the statute and serves to preserve the delicate balance inherent in joint legal custody arrangements. It ensures that neither parent can unilaterally make major decisions affecting the child, fostering an environment of cooperation, shared responsibility, and ultimately, the protection of the child's best interests.

In conclusion, the Court of Appeals' decision in this case represents a sound application of the principles established in *Frazier* and *Hansen* and a steadfast commitment to upholding the best interests of the child. Katie's attempt to change the child's school without modifying the custody arrangement or securing Gary's agreement is fundamentally at odds with the "all-or-nothing" nature of joint legal custody under Iowa law. It is an action that risks disrupting the child's life and undermining the stability and continuity that are so vital to their well-being.

2. The Court of Appeals did not err by affirming the trial court's refusal to modify the terms of the parties' existing custody order that dictated where the minor child must attend school.

The Court of Appeals correctly determined that Katie's relocation, while a change in circumstances, does not rise to the level of a "material and substantial change" necessary to modify the child's school district, especially given the child's young age. The relatively short distance between the two school districts, a mere 21 miles, and Gary's willingness to facilitate transportation further support the appellate court's conclusion that the change in Katie's residence does not justify disrupting the child's established school environment. As emphasized in *Hobson v. Hobson*, 248 N.W.2d 137, 140 (Iowa 1976), modifications to custody arrangements should not be granted lightly, and a substantial change in circumstances is required to justify such a change.

Moreover, the child has been attending school in St. Ansgar since the initial custody decree, establishing a sense of stability and continuity in their educational environment. Uprooting a young child from their familiar school, friends, and routines can have significant emotional and developmental consequences. The Court of Appeals wisely prioritized these concerns, demonstrating a clear understanding that the child's well-being should not be sacrificed for the sake of

convenience or parental preference. This aligns with the principle established in *In re Marriage of Mikelson*, 299 N.W.2d 670, 671 (Iowa 1980), which emphasized the importance of stability and continuity in a child's life, particularly in the context of custody arrangements.

While Iowa Code § 598.21D allows for modification based on changes in residence, the appellate court correctly noted that the trial court must carefully weigh the impact of such a change on the child's overall well-being, considering factors outlined in Iowa Code § 598.41(3), including the child's current environment and the desirability of maintaining continuity. The minimal distance between the schools and Gary's offer to handle transportation support the Court of Appeals' conclusion that the change in Katie's residence does not constitute a "more or less permanent" change as required by *In re Marriage of Frederici*, 338 N.W.2d 156, 159-60 (Iowa 1983), nor does it necessitate a disruptive change in the child's school district.

The Court of Appeals also rightly rejected Katie's argument that she has the final say on school choice due to having primary physical care. As clarified in *In re Marriage of Hansen*, 733 N.W.2d 683, 690-91 (Iowa 2007), major decisions like school *choice* fall within the realm of legal custody, requiring the agreement of both joint legal custodians. The appellate court's decision upholds this principle,

ensuring that both parents have an equal voice in decisions affecting the child's education and overall well-being.

This also aligns with the principle established in *In re Marriage of Mikelson*, which emphasized the importance of stability and continuity in a child's life, particularly in the context of custody arrangements. While Iowa Code § 598.21D allows for modification based on changes in residence, the court must carefully weigh the impact of such a change on the child's overall well-being, considering factors outlined in Iowa Code § 598.41(3), including the child's current environment and the desirability of maintaining continuity. In this case, the minimal distance between the schools, coupled with Gary's willingness to facilitate transportation, Katie's existing commute all suggest that the change in Katie's residence does not constitute a "more or less permanent" change as required by *In re Marriage of Frederici*, nor does it necessitate a disruptive change in the child's school district.

Iowa Code § 598.1(3) is plain, clear and unambiguous. Education is a clear area that Gary has equal decision making rights and responsibilities in the life of the parties' minor child, M.N.L. In Iowa, we have the good fortune for having a statutory definition of the "best interests of the child." Iowa Code § 598.1(1) states as follows:

> "*"Best interest of the child"* includes but is not limited to the opportunity for maximum continuous physical and emotional contact possible with both parents, unless direct physical or significant emotional harm to the child may result from this contact. Refusal by one parent to provide this opportunity without just cause shall be considered harmful to the best interest of the child."

The record, as highlighted in the Final Appellee's Brief, reveals instances where Katie intentionally and without justification attempted to significantly limit M.N.L.'s contact with Gary, even preventing pre-school visits. Such actions raise serious concerns about Katie's willingness to foster a healthy parent-child relationship between M.N.L. and Gary. This behavior directly contravenes the "best interests of the child" standard, which prioritizes the child's opportunity for maximum continuous contact with both parents, as codified in Iowa Code § 598.41(1)(c). Katie's actions not only complicate the current situation but also cast doubt on her commitment to promoting the child's well-being and healthy relationships with both parents. This violates the "best interests of the child standard" and it further complicates the situation. Iowa Code § 598.41(1)(c) states as follows:

> "The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Just cause may include a determination by the court pursuant to subsection 3, paragraph *"j"*, that a history of domestic abuse exists between the parents."

There are three (3) generals rules that warrant a modification:

1.) A material change in circumstances that could not have been contemplated before, to include by due diligence of the parties; (NOTE: If changing physical care or custody, it must be a material and substantial change in circumstances because continuity and stability of care of a child is so important that a change of this magnitude must be for the most cogent of reasons). *See* Iowa Code § 598.31(3)(d).

2.) Said change in circumstances must be more or less permanent or continuous, not just temporary;

3.) If seeking a change in physical care for primary care or sole legal custody, the movant must prove they're the superior parent; or if seeking joint physical care, the movant(s) must show that this is in the best interests for the minor child.

See In re Marriage of Frederici, 338 N.W.2d 156, 159-60 (Iowa 1983); *In re Marriage of Mikelson*, 299 N.W.2d 670, 671 (Iowa 1980); and *Hobson v. Hobson*, 248 N.W.2d 137, 149-40 (Iowa 1976).

The district court contemplated and found that the difference in mileage is twenty-one (21) miles. Generally speaking, joint physical care arrangements can exist by up to thirty-five (35) miles in some cases. Even though it appears that it took three (3) years to file, Katie still has to drive to Northwood, Iowa, through St.

Ansgar to her parent's place to work for their catering business. Twenty-one (21) miles is unsubstantial in comparison to those that live rural areas where school districts span by up to forty-five (45) miles in some cases, or even in the urban areas where one parent lives in West Des Moines or Waukee in Dallas County and the other lives in Altoona. When you pair this with Katie's withholding of M.N.L. from Gary, it does appear that Katie is intentionally creating conflict to make things harder on Gary. It should be noted that the record does show that Gary offered to be responsible for all of the transportation for M.N.L. to get back and forth from school in St. Ansgar.

Under the Court of Appeals case, Katie argued, "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." *See* page 24 of Appellant's Final Brief.

Sparing the Court the burden of enumerating the same words that Katie and her Attorney have already laid to paper on pages 24 through 27 of the Final Appellant's Brief, Mr. Howie aptly cites the following case: *In re Marriage of Hynick*, 727 N.W.2d 575 (Iowa 2007), *In re Marriage of Hoffman*, 867 N.W.2d 26 (Iowa 2015), and *Matteson*, No. 16-0401, 2017 WL 361999 (Iowa Ct. App. Jan. 25, 2017). In doing so, he attempts to skate around what the definition of physical

care is as compared to legal custody. However, *In re Marriage of Hansen*, most cited case in recent Iowa family law history, aptly define it:

> "At the outset, it is important to discuss the differences between joint legal custody and joint physical care. *In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007). "Legal custody" carries with it certain rights and responsibilities, including but not limited to "decision making affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction." Iowa Code § 598.1(3), (5) (2005). When joint legal custody is awarded, "neither parent has legal custodial rights superior to those of the other parent." *Id*. § 598.1(3). A parent who is awarded legal custody has the ability to participate in fundamental decisions about the child's life.
>
> On the other hand, "physical care" involves "the right and responsibility to maintain a home for the minor child and provide for routine care of the child." *Id*. § 598.1(7). If joint physical care is awarded, "both parents have rights to and responsibilities toward the child including, but not limited to, shared parenting time with the child, maintaining homes for the child, [and] providing routine care for the child ..." *Id*. § 598.1(4). The parent awarded physical care maintains the primary residence and has the right to determine the myriad of details associated with routine living, including such things as what clothes the children wear, when they go to bed, with whom they associate or date, etc.
>
> If joint physical care is not warranted, the court must choose a primary caretaker who is solely responsible for decisions concerning the child's routine care. *Id*. § 598.1(7). Visitation rights are ordinarily afforded a parent who is not the primary caretaker. *Hynick*, 727 N.W.2d at 579." *In re Marriage of Hansen*, 733 N.W.2d 683, 690-91 (Iowa 2007).

Katie's assertion that primary physical care somehow grants her unilateral authority over the child's school choice is a misinterpretation of Iowa law and a

direct affront to the principle of equal decision-making inherent in joint legal custody. As clearly articulated in *In re Marriage of Hansen*, 733 N.W.2d 683, 690-91 (Iowa 2007), the parent with physical care is primarily responsible for the child's "routine care," encompassing matters such as clothing, bedtime, and social interactions. However, major decisions impacting the child's life, including education, remain the shared responsibility of both joint legal custodians.

Attempting to equate decisions about daily routines with those concerning education fundamentally diminishes the significance of joint legal custody and disregards the legislature's intent to grant both parents equal authority in shaping their child's future. School choice is not merely a matter of convenience or personal preference; it is a pivotal decision with long-term implications for the child's development and well-being. To allow one parent to unilaterally dictate such a crucial aspect of the child's life would render the concept of joint legal custody meaningless and deprive the other parent of their rightful role in their child's upbringing.

CONCLUSION

IowaFathers urges the Court to affirm the Court of Appeals' ruling. Upholding the trial court's decision promotes stability and continuity in the child's life, respecting the equal rights of both parents under the joint legal custody

arrangement. The current circumstances do not warrant a change in the child's school district. The child's well-being must remain paramount, fostering a healthy and supportive environment for their growth and development. Parents are permitted to make life changes for themselves, including remarrying and relocating for a spouse's job requirements, but to do so does not come at the cost of joint custodian equality nor does it limit the court's ability to be the ultimate arbitrator in unresolved disputes between joint custodians in determining what is the best interest of the child.

Respectfully submitted,

/s/ Brad Bonner

Brad Bonner, AT0008983
IOWA LEGAL, PLC
1317 Broadway St.
P.O. Box 278
Denison, IA 51442
(712) 263-4245
brad.bonner@iowalegal.law
ATTORNEY FOR AMICUS CURIAE

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(l)(g)(l) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 font and contains 5,194 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(l).

Date: September 9, 2024 /s/ Brad Bonner

BRAD BONNER AT0008983
ATTORNEY FOR AMICUS CURIAE

CERTIFICATE OF SERVICE

I, Brad Bonner, Attorney of Record for Amicus Curiae in the above captioned action certifies that service has been made via EDMS when this brief was filed.

Date: September 9, 2024 /s/ Brad Bonner

BRAD L. BONNER AT0008983
ATTORNEY FOR AMICUS CURIAE