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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 25-1351
KEOKUK COUNTY NO. DREQ041508

AUSTON DAVID HERMAN,
Petitioner/Appellee
v.
HOLLY NOEL MORRISON,
Respondent/Appellant

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR KEOKUK COUNTY IN DREQ041508
THE HONORABLE CRYSTAL CRONK, JUDGE

APPELLANT'S BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. **THE DISTRICT COURT'S DECISION TO AWARD AUSTON PRIMARY PHYSICAL CARE OF L.P.H. DISREGARDS THE CHILD'S BEST INTERESTS AND UNDERMINES THE FUNDAMENTAL PRINCIPLES GUIDING CUSTODY DETERMINATIONS**

II. **THE DISTRICT COURT'S AWARD OF JOINT LEGAL CUSTODY DIRECTLY CONTRADICTS THE BEST INTERESTS OF L.P.H. DUE TO THE PARTIES' DOCUMENTED HISTORY OF DOMESTIC VIOLENCE, PERSISTENT ACRIMONY, AND TOTAL INABILITY TO COMMUNICATE.**

III. **THE COURT SHOULD AWARD HOLLY APPELLATE ATTORNEY FEES.**

ROUTING STATEMENT

This case involves the application of existing legal principles. Accordingly, it should be transferred to the Court of Appeals. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This appeal stems from the Decree of Child Custody, Visitation, and Support (hereinafter "Decree") entered by the Honorable Crystal Cronk. [D0098, Decree, 07/22/2025].

Prior Proceedings and Disposition

On August 22, 2024, Auston filed a Petition for Custody. [D0003, Petition for Custody, 08/22/2024]. A temporary hearing was held on November 14, 2024. Holly was unrepresented at that time. In her affidavit, Holly noted her belief that Auston could not legally have custody of L.P.H. due to the pending charges and no contact order. [D0017, Affidavit of Holly Morrison, 11/12/2024]. The district court awarded Auston physical care on a temporary basis. [D0020, Order on Temporary Matters, 11/14/2024]. Trial was held on July 17, 2025. The District Court of Keokuk County entered the Decree on July 22, 2025. [D0098, Decree, 07/22/2025].

On August 19, 2025, Holly timely filed a Notice of Appeal. [D0121, Notice of Appeal, 08/22/2025].

STATEMENT OF FACTS

Holly Morrison and Auston Herman are the parents of one minor child, L.P.H. [D0190 Tr. p. 91:13-16, 09/28/2025]. At the time of trial, L.P.H. was 5 years old. [D0190 Tr. p. 91:17-18, 09/28/2025].

Holly is 34 years old. [D0190 Tr. p. 91:12, 09/28/2025]. She lives in Comfrey, Brown County, Minnesota. She lives with her partner, Jordan Simon. Holly's children from her previous marriage and Jordan's children from previous relationship reside in the home intermittently. [D0190, Tr. p. 91:21-92:11, 09/28/2025]. Holly is a licensed nurse. At the time of trial, Holly was not employed outside of the home and was focused on caring for the children and Jordan's great-grandmother. [D0190, Tr. p. 116:20-12, 09/28/2025].

Auston is 41 years old. [D0190, Tr. p. 7:15, 09/28/2025]. He lives in Sigourney, Keokuk County, Iowa. He is self-employed as a farmer. [D0190, Tr. p. 7:18-19, 09/28/2025]. Auston has another child, a twelve-year old daughter, who he exercises visitation with regularly. [D0190, Tr. p. 13:17-25, 09/28/2025]. Auston lives with his girlfriend, Samantha Moore, and her two minor children. [D0190, Tr. p. 46:7-16, 09/28/2025].

Holly and Auston began a relationship in 2019. [D0190 Tr. p. 93:11-13, 09/28/2025]. During Holly's pregnancy, Auston physically assaulted her by pushing her to the ground. [D0190 Tr. p. 95:11-19, 09/28/2025; D0157, Exhibit B1 p. 1, 08/21/2025]. On August 19, 2020, he was charged with domestic abuse assault for this offense. [D0157, Exhibit B1 p. 7, 08/21/2025]. A protective order between the parties was entered as a result. Pursuant to a plea agreement, Auston pled guilty to a lesser charge of disorderly conduct on July 29, 2020. [D0157, Exhibit B1 p. 9, 08/21/2025].

L.P.H. was born on February 4, 2020. Auston was not involved in L.P.H.'s life until he was roughly two years old, when the parties rekindled their relationship. [D0190, Tr. p. 96:16-22, 09/28/2025]. In September of 2022, Holly moved into Auston's home. [D0190, Tr. p. 97:9-15, 09/28/2025]. Their relationship was plagued with domestic abuse. Not long after Holly moved in, she and L.P. H. were victimized by Auston. In December of 2022, Auston was upset with L.P.H. for spilling his yogurt and he disciplined the two-year-old child by striking him. [D0190 Tr. 98:2-17, 09/28/2025]. Holly attempted to intervene and Auston turned his anger towards her and assaulted her, as well. [D0190 Tr. 98:2-17, 09/28/2025]. Police were called that night and eventually the Iowa Department of Health and Human Services ("HHS") began an investigation. Child Protection Worker Brigham met with Holly and L.P.H. to

investigate this incident. [D1023, Exhibit 1 p. 4, 08/21/2025]. "CPW Brigham observed bruising along her jaw line, and her chin which could be coincident [sic] with her stating she was strangled. Holly also had bruising along her arms." [D0123, Exhibit 1 p. 4, 08/21/2025]. "CPW Brigham observed bruising behind the ear of [L.P.H.]. Bruising on and behind the ear is indicators [sic] of abuse." [D0123, Exhibit 1 p. 4, 08/21/2025]. Auston testified "they claimed there was a bruise, but there never was." [D0190, Tr. p. 72:25-73:1, 09/28/2025].

In February of 2022, HHS received yet another allegation of abuse. [D0159, Exhibit D1 p. 6, 08/21/2025]. HHS interviewed Auston's twelve-year-old daughter about the allegation and she stated that she heard her dad come home and tell Holly "he wanted to kill her and rip her throat out" and that she heard Holly pleading for Auston to "stop choking [her]." [D0159, Exhibit D1 p. 7, 08/21/2025]; she also reported that Holly had bruises after this incident. Auston's daughter also noted that Auston "hit her brother [L.P.H.] in the head." [D0159, Exhibit D1 p. 7, 08/21/2025]. On February 21, 2023, Holly was interviewed again, and the following observations were noted: "CPW Brigham observed a bruise above Holly's neck and asked what happened… Holly also had bruising down her neck, marks on her chin, and her chest was black and blue from Auston hitting her." [D0123, Exhibit 1 p. 4, 08/21/2025]. Auston's feeble response to this allegation is that Holly's bruises were from sex. [D0159,

Exhibit D1 p. 7, 08/21/2025]. Obviously, his story was not credible. In March of 2023, L.P.H. was removed from his parents' care due to domestic abuse.

Later in 2023, Auston once again committed an act of violence against Holly. Holly testified that Auston came into her home against her wishes, assaulted her, and threatened her with a gun. [D0190, Tr. p. 101:9-15, 09/28/2025]. Auston was charged with burglary in the first degree with possession of a dangerous weapon and domestic abuse assault with a dangerous weapon. [D0156, Exhibit A1 p. 10, 08/21/2025]. Auston denied ***any*** wrongdoing for this incident. [D0190, Tr. p. 72:11-16, 09/28/2025]. This is directly contrary to the factual basis to his guilty plea which explicitly admits "I did commit 3rd degree burglary upon the property of [Holly Morrison]." [D0156, Exhibit A1 p. 20, 08/21/2025]. At the time of trial, Auston was on probation for this offense. [D0190, Tr. p. 27:21-22, 09/28/2025].

As a result of this incident, a criminal no contact order was entered on September 13, 2025, prohibiting contact between the parties. [D0156, Exhibit A1 p. 5, 08/21/2025; D0190, Tr. p. 74:20-22, 09/28/2025]. Importantly, it also stated "any child visitation or contact with Plaintiff's or Other Protected Person's children that is allowed by any other order is suspended while this Temporary No Contact Order is in effect." [D0156, Exhibit A1 p. 6, 08/21/2025].

L.P.H. was returned to Holly's care on November 8, 2023. [D0130, Exhibit 7 p.3, 08/21/2025]. In February of 2024, the juvenile court considered placing L.P.H. in Auston's care and, after months of involvement with the family, explicitly decided it was not in the child's best interest. [D0131, Exhibit 9 p. 3, 08/21/2025]. Auston himself testified that he did not have unsupervised visitation until July of 2025. [D0190 Tr. 33:20-34:5, 09/28/2025]. On August 15, 2024, the juvenile case pertaining to L.P.H. was closed; L.P.H. remained in Holly's care and there was no order concerning Auston's visitation. [D0138, Exhibit 16, 08/21/2025]. Importantly, the criminal no contact order between Auston and Holly was still in place at this time.

On August 22, 2024, Auston filed a Petition for Custody. [D0003, Petition for Custody, 08/22/2024]. A temporary hearing was held on November 14, 2024. Holly was not represented by an attorney at that point in the proceeding. In the affidavit she filed, she explained in detail why she believed that Auston could not legally have custody of L.P.H. due to the pending charges and no contact order. [D0017, Affidavit of Holly Morrison, 11/12/2024]. Nonetheless, the district court awarded Auston physical care on a temporary basis. [D0020, Order on Temporary Matters, 11/14/2024].

L.P.H. is very closely bonded to his mother. [D0167, Exhibit L1, 08/21/2025]. He also has a good relationship with all of his siblings. L.P.H. is in

good physical health. [D0166, Exhibit K1, 08/21/2025]. While he has hyperactive tendencies, Holly manages his behavior by making sure he has a lot of mental and physical stimulation. [D0190, Tr. p. 119:17-120:7, 09/28/2025]. The domestic abuse that he suffered and witnessed caused him to fixate on his mother's safety. [D0131, Exhibit 9 p.3, 08/21/2025]. At the time of trial, L.P.H. had finished a year of pre-school in Comfrey, Minnesota. [D0190, Tr. p. 118:23-119:16, 09/28/2025].

Additional facts will be discussed below.

I. THE DISTRICT COURT'S DECISION TO AWARD AUSTON PRIMARY PHYSICAL CARE OF L.P.H. DISREGARDS THE CHILD'S BEST INTERESTS AND UNDERMINES THE FUNDAMENTAL PRINCIPLES GUIDING CUSTODY DETERMINATIONS.

a. Error Preservation.

"Issues must ordinarily be both raised and decided by the District Court before we will decide them on appeal". *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). (internal citation omitted). Holly preserved error on this issue by raising it at trial.

b. Scope and Standard of Review.

Custody cases are tried in equity, so the standard of review is *de novo*. Iowa R. App. P. 6.907. The appellate court must examine the entire record and decide anew the legal and factual issues properly presented for review. *In re Marriage of Rinehart*, 704 N.W.2d 677, 680 (Iowa 2005). The Appellate Court

does not need to separately consider assignments of error in the trial court's findings of fact and conclusions of law; rather, the appellate court makes its own appropriate findings and conclusions based on its *de novo* review. *Lessenger v. Lessenger*, 156 N.W.2d 845, 846 (Iowa 1968). Upon *de novo* review of this case, this Court should modify the trial court's decision and designate Holly as the primary care parent.

c. The District Court Erred in Penalizing Holly for Withholding Visitation When Iowa Law Expressly Recognizes Domestic Abuse as Just Cause for Such Protective Action.

The district court's decision to award Auston primary physical care unjustifiably rests on the fact that Holly withheld visitation from Auston.

The district court's singular focus on Holly's withholding of visitation ignores the broader best interest analysis required by statute. While it is appropriate for the trial court to consider which parent is better suited to foster the child's relationship with the noncustodial parent, it is only one of a multitude of factors in determining a physical care placement that is in the best interest of a minor child. Here, the trial court did not appropriately consider Holly's reasons for doing so, including protecting the wellbeing of L.P.H. The Iowa statute ***explicitly*** notes that domestic abuse may be just cause for both withholding contact with the other parent and relocating away from the other parent. Iowa Code § 598.41(c) and Iowa Code § 598.41(d). Despite the fact that

it was required to do so under Iowa law, the trial court does not even feign to undergo any balancing tests of these competing interests. In fact, the Iowa Court of Appeals has specifically weighed the presence of domestic violence against denial of visitation and stated: "We find the detrimental effects of family violence to be the more compelling factor when considering which custodial award would be in the best interest of the children." *In re Marriage of Daniels,* 568 N.W.2d 51, 56 (Iowa Ct. App. 1997). After considering the totality of the circumstances, it is clear that the district court's decision failed to make family violence the more compelling factor in its analysis and in doing so, reached a decision that was not in the best interest of the minor child.

First, Holly testified openly about her confusion related to the no contact order between the parties and its impact on facilitating visitation between L.P.H. and Auston. [D0190, Tr. p. 143:16-19, 09/28/2025]. The no contact order states: "Any child visitation or contact with Plaintiff's or other Protected Person's children that is allowed by any other order is suspended while this temporary no contact order is in effect." [D0190, Tr. p. 76:24-77:4, 09/28/2025; D0156, Exhibit A1 p. 6, 08/21/2025]. Beyond the actual text of the no contact order, Holly also received conflicting interpretations of the order. She was told by Chauncey Moulding, the Jefferson County Attorney, that Auston could not have contact with L.P.H. according to the no contact order.

[D0190, Tr. p. 133:17-22, 09/28/2025]. Moreover, the district court in Minnesota (where she resided with the child) agreed with her interpretation. The Minnesota court declined to find her in contempt and did not instruct her to return L.P.H. to Auston's care. [D0190, Tr. p. 116:3-9, 09/28/2025; D0164. Exhibit I1, 08/21/2025; D0165, Exhibit J1, 08/21/2025]. Holly did not create her interpretation of the protective order out of thin air or based on bad advice; her reliance on the judicial system and the prosecuting attorney to explain the protective order was clearly reasonable. If a court was convinced that the criminal no contact order between the parties applied to Auston's interactions with L.P.H, surely Holly's understanding, as a lay person, was in good faith. There is also the obvious issue of facilitating exchanges or visitation given the no contact order between the parties. How was Holly supposed to facilitate an exchange with Auston without violating the no contact order? Importantly, there was no modification of the no contact order to allow the parties to communicate about the child or allow the parties to be in the same location to facilitate the actual exchange of the child. Holly's belief that she and L.P.H. could not be in contact with Auston was reasonable and that visitation orders were suspended should not have been held against her by the trial court.

Next, Holly was understandably fearful about the safety of L.P.H. and herself. Auston has a long history of domestic abuse. Before his relationship

with Holly, he committed violence against other romantic partners including Amy Wells and Brittney Adams. [D0190, Tr. p. 60:22-61:22, 09/28/2025; D?, Exhibit C1, 09/28/2025]. Despite both previous partners having protective orders against Auston at one time, he stubbornly refused to admit any wrongdoing. [D0190, Tr. p. 60:22-61:25, 09/28/2025; D0190, Tr. p. 64:5-21, 09/28/2025]. Holly herself suffered severe violence at Auston's hand. She testified in detail about her traumatic experience as Auston's victim. Holly testified about numerous instances where Auston was physically violent with her, including strangling her and threatening her with a gun. [D0190, Tr. p. 100:1-12, 09/28/2025; D0190, Tr. p. 101:9-15, 09/28/2025]. She documented some of the gruesome injuries that she had suffered including black eyes, hair being ripped from her scalp, bruises on her arms, a split lip, and other horrible injuries. [D0161, Exhibit F1, 08/21/2025]. Auston denied abuse repeatedly even though he pled guilty to a number of charges stemming from his abuse of Holly, the photographs of Holly's injuries, the Child Abuse Assessment, the observations of the Child Protective Worker ("CPW") who documented Holly's bruises, and Holly's own testimony.

Unfortunately, Auston's abuse did not stop with Holly. Auston also assaulted L.P.H. Holly witnessed this act and testified that Auston struck L.P.H. in his face, which left a bruise. [D0190, Tr. p. 99:3-14, 09/28/2025; D0161,

Exhibit F1, 08/21/2025]. L.P.H. was adjudicated a child in need of assistance based on Auston's abuse of L.P.H. and Holly. One of the CPW involved in the juvenile case noted the bruise on L.P.H. as a result of the attack. Auston completely denied the bruise existed. Although after years of services from the department, HHS deemed him safe to be around the child, Holly's firsthand experience as Auston's victim cannot be discounted in understanding her motives for withholding the child from her abuser. Auston's proclivity for violence cannot be ignored, nor can his inability to take an ounce of responsibility for the physical and emotional pain he caused Holly and L.P.H.

Finally, and most importantly, assuming *arguendo*, there was no rational basis for Holly's refusal, which she contends there is, it still does not justify an award of primary care to Auston. The record reveals that the district court awarded primary physical care to Auston not because such placement serves the child's welfare, but to punish Holly for her failure to comply with visitation orders. This punitive approach fundamentally misapplies Iowa custody law, which expressly recognizes that physical care determinations are "not a matter of reward or punishment." *In re Bowen's Marriage*, 219 N.W.2d 683, 687–88 (Iowa 1974).

Physical care determinations must be based exclusively on the best interests of the child, not on sanctioning parental conduct. *In re Marriage of*

Hansen, 733 N.W.2d 683, 695 (Iowa 2007). While courts possess contempt powers to address violations of court orders, custody is not, and cannot be, a punishment mechanism. Iowa Code § 598.23. A parent's noncompliance with court orders, even if unjustified, does not transform an unsafe or inferior placement into one that serves the child's best interests. Here, the district court confused its authority to sanction Holly for contempt with its duty to determine what custody arrangement will best promote the child's physical, mental, and social maturity. The two inquiries are distinct, and for good reason. If the court believed Holly violated its orders without just cause, the appropriate remedy was a contempt finding, not placing the child with an abusive parent. Holly suffered horrific abuse throughout her relationship with Auston and the court revictimized her by placing L.P.H. with the abuser as retribution for her perceived disobedience. The district court's refusal to engage in any analysis regarding the tension of Holly's withholding L.P.H. with the domestic violence perpetrated by Auston is disturbing. By using custody as a punitive tool, the trial court sacrificed the child's welfare to express its disapproval of Holly's conduct—a fundamental error that requires reversal.

d. The District Court Failed to Properly Consider Factors Related to the Best Interest of the Child, All of Which Favor an Award of Primary Physical Care to Holly.

The trial court wholly failed to properly evaluate the myriad of factors associated with determining a physical care placement in L.P.H.'s best interest.

"The issue [of physical care] is ultimately decided by determining under the whole record which parent can minister more effectively to the long-range best interests of the children." *In re Bowen's Marriage,* 219 N.W.2d 683, 687–88 (Iowa 1974). In considering which parent is better suited for this role, the court considers a multitude of factors, including those set forth in Iowa Code § 598.41 and those identified in case law. *In re Winter's Marriage*, 223 N.W.2d 165, 166 (Iowa 1974). Upon thorough review of the evidence, it is clear Holly is the parent better equipped to cater to L.P.H.'s best interests.

Domestic abuse is a preeminent factor in determining child custody. Iowa courts have previously recognized that "violent tendencies of a parent adversely impact on the fitness of that parent to be the primary caretaker of a child." *In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa Ct. App. 1994). Both the actual abuse perpetrated by Auston and his repeated attempts to minimize or deny the abuse are relevant. *Id*. "Children raised in homes touched by domestic abuse are often left with deep scars, revealed in the form of increased anxiety, insecurity and a greater likelihood for later problems in interpersonal relationships." Most importantly, domestic abuse places children at a greater risk of being physically abused themselves. *Id*. "Domestic abuse is,

in every respect, dramatically opposed to a child's best interests." *In re Marriage of Daniels*, 568 N.W.2d 51, 55 (Iowa Ct. App. 1997). Again, the district court inappropriately dismissed domestic violence as a significant, if not ***most*** important, factor in determining a physical care placement in the best interest of L.P.H.

As discussed previously, the evidence at trial revealed that Holly suffered a lengthy history of physical abuse from Auston. Unfortunately, L.P.H. has already been Austin's victim. Consistent with his typical pattern, Auston has taken absolutely no responsibility for the abuse he perpetuated and in trial testified that Holly's reports of abuse were just her trying to "get [him] in trouble." [D0190, Tr. p. 9:6-11, 09/28/2025]. When asked directly, he testified "I have not assaulted her." [D0190, Tr. p. 72:11-16, 09/28/2025]. Auston makes a weak argument that because he pled to lesser included offenses than those he was originally charged with, he did not commit the violence. It is a painful reality that defendants are often given plea agreements in the interest of judicial economy. Nothing about the fact that Auston pled to a lesser included offense or received a deferred judgment changes the fact that he assaulted Holly on several occasions. Auston's refusal to take accountability for his actions despite pleading guilty to criminal charges is disturbing and calls into question his parenting ability. It is abundantly clear that Auston's history of violence,

specifically against Holly and L.P.H., cuts against awarding him primary physical care.

Another imperative factor is the impact on the child of continuing or disrupting an existing custodial status. *In re Winter's Marriage*, 223 N.W.2d 165, 166 (Iowa 1974). A party's experience as the child's primary caretaker is given considerable weight. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996). Although it is not the sole factor to consider, "the role of primary caretaker is critical in the development of children, and careful consideration is given in custody disputes to allowing children to remain with the parent who has been the primary caregiver." *In re Marriage of Mann*, 791 N.W.2d 711 (Iowa Ct. App. 2010). Continuity and stability are incredibly important for a child's development. L.P.H. has spent almost the entirety of his young life in Holly's care. In fact, the only time when L.P.H. was not in Holly's care was after HHS removed the child due to Auston's abuse. [D0190, Tr. p. 84:12-23, 09/28/2025]. Auston was not involved in L.P.H.'s life ***at all*** until the child was approximately two years old. [D0190, Tr. p. 96:16-22, 09/28/2025]. At the time of trial, L.P.H. lived in Comfrey, Minnesota with Holly. He had attended preschool in this area and planned to continue his education there. [D0190, Tr. p. 118:23-119:16, 09/28/2025]. Removing L.P.H. from his home, his siblings, his peers, his school, and the parent he has historically relied upon is incredibly

distressing and detrimental to his mental and emotional health. The trial court failed to even ***consider*** the disruptive impact of uprooting L.P.H.'s life in awarding Auston primary care and only awarding Holly one weekend of visitation each month. In fact, the trial court did not even attempt to explain how this schedule would be in L.P.H.'s best interest.

The parties' ability and interest in providing for the needs of the child is yet another significant element to consider. *In re Winter's Marriage*, 223 N.W.2d 165, 166–67 (Iowa 1974). Iowa law clearly seeks to place children with the parent who can superiorly care for the wellness of the child. *Melchiori v. Kooi*, 644 N.W.2d 365 (Iowa Ct App. 2002). Specifically, "(t)he court's objective is to place the children in the environment most likely to bring them to a healthy physical, mental, and social maturity." *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The priority of the parties in this regard is exemplified through their testimony. Holly testified at length about L.P.H. and her knowledge and care for her child was evident. Holly testified about L.P.H.'s health, including his ADHD diagnosis and how she monitors and manages his hyperactive behavior. [D0190, Tr. p. 119:17-120:7, 09/28/2025]. She described his daily routine including his school schedule and the chores he has in her home. [D0190, Tr. p.118:19-119:15;D0190, Tr. p. 121:21-112:4, 09/28/2025]. Holly further discussed L.P.H.'s close relationships with his

siblings and with Jordan's children. [D0190, Tr. p. 121:4-20, 09/28/2025]. She also testified about what L.P.H. enjoys doing, including playing on the trampoline and in the sprinkler. Holly also testified that she and L.P.H. have a very close relationship and that he is a "momma's boy." [D0190, Tr. p. 122:5-12, 09/28/2025]. The early childhood screening noted no concerns in L.P.H.'s mental or physical health. [D0166, Exhibit K1, 08/21/2025]. The district court completely ignores any of this evidence and instead makes casual reference to an observation that L.P.H. had some behavior issues in Holly's care. [D0098, Decree, 07/22/2025]. These concerns seemingly come from the report of social worker Tori Torres in the ongoing CINA case and were limited to one visit. [D0136, Exhibit 14]. Children can have bad days in the care of either party and it's not surprising that L.P.H. would be more comfortable lashing out in the care of a parent who has provided love and stability throughout his life. Neither party testified about this issue and the concern seems to be wildly overblown. Notably, Auston provided no negative evidence or testimony related to Holly's ability to parent L.P.H. other than the complaint that the child was withheld from him.

Auston offered ***no*** testimony related to L.P.H.'s personality, likes and dislikes, academic inclination, or any specific needs he has. That should have spoken volumes to the trial court. He also failed to mention how he would

support the child's physical, mental, and social needs. Auston offered no indication of what he would do for childcare if awarded primary care or where the child would go to school. Oddly, the trial court reached the conclusion that Auston has shown an ability to provide for L.P.H.'s needs without any evidence being presented to that effect. [D0098, Decree, 07/22/2025].

The child's characteristics and needs are also important considerations for the court. *In re Winter's Marriage*, 223 N.W.2d 165, 166–67 (Iowa 1974). L.P.H. is closely bonded to Holly. In fact, it was noted that due to L.P.H.'s life experiences, he was hyper focused on his mother. [page 56?] L.P.H. has also experienced extreme instability and chaos in his young life. Given his life experiences, stability and security are extremely important. Holly provides both.

The aforementioned are only some of many factors to be considered. When considering the factors as outlined by Iowa law and the evidence presented it is clear that the trial court's ruling in this case overlooks almost all of the factors that Iowa law specifically directs the court to evaluate. As a result, its conclusions of law are inappropriate and contrary to the best interests of L.P.H. As such, the trial court's decision should be reversed.

II. THE DISTRICT COURT'S AWARD OF JOINT LEGAL CUSTODY DIRECTLY CONTRADICTS THE BEST INTERESTS OF L.P.H. DUE TO THE PARTIES' DOCUMENTED HISTORY OF DOMESTIC VIOLENCE, PERSISTENT ACRIMONY, AND TOTAL INABILITY TO COMMUNICATE.

a. Error Preservation.

"Issues must ordinarily be both raised and decided by the District Court before we will decide them on appeal". *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (internal citation omitted). Holly preserved error on this issue by raising it at trial.

b. Scope and Standard of Review.

Custody cases are tried in equity, so the standard of review is *de novo*. Iowa R. App. P. 6.907. The appellate court must examine the entire record and decide anew the legal and factual issues properly presented for review. *In re Marriage of Rinehart*, 704 N.W.2d 677, 680 (Iowa 2005). The Appellate Court does not need to separately consider assignments of error in the trial court's findings of fact and conclusions of law; rather, the appellate court makes its own appropriate findings and conclusions based on its *de novo* review. *Lessenger v. Lessenger*, 156 N.W.2d 845, 846 (Iowa 1968). Upon *de novo* review of this case, this Court should award Holly sole legal custody.

c. The District Court Should Have Awarded Holly Sole Legal Custody Given the Clear Evidence of Auston's Domestic Violence Against Her and the Parties Inability to Communicate.

The district court awarded joint legal custody, despite the clear history of domestic abuse Holly suffered at Auston's hand. Iowa law is clear that "if the court finds that a history of domestic abuse exists, a ***rebuttable*** presumption against the awarding of joint custody exists". Iowa Code § 598.41(1)(b) (emphasis added). Despite the obvious evidence of domestic violence, the trial court's analysis does not even attempt to evaluate whether the presumption was successfully rebutted by Auston and took an unpredictable turn and awarded the parties joint legal custody of L.P.H. This conclusion was in error.

In assessing what is sufficient to constitute a history of domestic abuse to create a rebuttable presumption of sole legal custody, the court must weigh the evidence of abuse, its nature, severity, repetition, and to whom it was directed. *In re Marriage of Forbes,* 570 N.W.2d 757, 760 (Iowa 1997). In this matter, Holly suffered ongoing and intense domestic violence which caused her numerous serious injuries. Moreover, the fact that L.P.H. himself was a victim also weighs heavily against the award of joint legal custody. *Id*. The rebuttable presumption against joint legal custody in cases involving domestic abuse exists precisely to prevent children from being caught in the crossfire of dysfunctional parenting relationships.

Incredulously, despite mountains of evidence, the trial court flatly refused to make a direct finding of domestic abuse. In fact, the district court skirted the issue of domestic violence entirely by stating, "The Court does not find Holly to report all situations but also does not completely believe each of Auston's denials." [D0098, Decree, 07/22/2025]. Even if the credibility of both parties was questionable, there is a plethora of evidence including the fact that Auston pled guilty to charges arising from domestic disturbances. The district court's notes "[w]hat is believable is that these two people cannot communicate…" [D0098, Decree, 07/22/2025]. This is not only an insulting minimalization of the abuse Holly suffered but a completely inaccurate reflection of the evidence.

The domestic abuse between Auston and Holly, as discussed at length above, clearly indicates that sole legal custody to Holly is appropriate and in L.P.H.'s best interest.

Even assuming, *arguendo*, the domestic abuse was not blatantly obvious, the parties' toxic relationship and inability to meaningfully communicate weighs heavily against an award of joint legal custody. Cooperation and communication are essential in a joint legal custodial arrangement. *In re Marriage of Gensley*, 777 N.W.2d 705, 715 (Iowa Ct. App. 2009). When the record is replete with evidence that shows the "acrimony between [the] parties

goes well beyond the normal discord attendant to separating couples," as is the case here, sole legal custody is appropriate. *In re Marriage of Nimrick*, 24 N.W.3d 781 (Iowa Ct. App. 2025). Although tension alone is not sufficient to demonstrate joint legal custody is not workable, case law is clear that an inability to appropriately communicate and cooperate may rise to a level at which joint legal custody is contrary to the children's best interest. *In re Marriage of Gensley*, 777 N.W.2d 705, 715 (Iowa Ct. App. 2009). Discourse between the parties that results in an inability to work together toward solutions may bring the daily lives of the children to a standstill and is certainly contrary to a child's best interest. *Id.*

In the present case, there is a criminal no contact order between the parties that strictly prohibits communication between the parties. The decision to award joint legal custody to parties who legally are prohibited from communication defies logic. Even if the no contact order was not in place, it is clear that Holly and Auston lack an ability to communicate meaningfully. At a minimum, the relationship between Holly and Auston is hostile and volatile.

"With an award of sole legal custody, one parent will make the decisions, which will ensure the decisions are made and result in a more stable atmosphere for the children to carry on with their daily lives." *Id*. Holly has always been the parent responsible for decision making related to L.P.H.'s

health, education, and wellness. It is clearly in the best interest of L.P.H. for Holly to be awarded sole legal custody. Accordingly, in light of both the indisputable domestic abuse and the complete inability for the parties to communicate, the Decree should be modified to designate Holly as the sole legal custodian.

III. THE COURT SHOULD AWARD HOLLY APPELLATE ATTORNEY FEES.

"Appellate attorney fees are not a matter of right but rather rest in this court's discretion." *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). Whether an award of appellate attorney fees is warranted is determined by considering both the needs of the party making the request and the ability of the other party to pay. *Markey v. Carney*, 705 N.W.2d 13 (Iowa 2005). Auston makes, at least, $28,659.96 annually. Auston is self-employed as a farmer and was evasive in testifying about his income. When asked on cross-examination if he believes he makes minimum wage he testified "I don't look at my tax returns every five minutes, so I don't know." [D0190, Tr. p. 71:3-6, 09/28/2025]. Then when his own attorney prompted him about his income he admitted that he reported an income of minimum wage and agreed with his counsel that "it's like grabbing smoke trying to figure out what a self-employed person earns. [d0190, Tr. p. 88:2-15, 09/28/2025]. In contrast, Holly is not currently employed outside of the home.

Holly therefore asks this Court to award her reasonable appellate attorney fees.

CONCLUSION

Holly requests this Court act as follows:

1. Reverse the district court's decision regarding physical care and award her primary physical care with Auston's right to visitation;
2. Reverse the trial court's decision to award joint legal custody and instead designate her as the child's sole legal custodian; and
3. Award Holly appellate attorney fees in the amount of $10,000.

REQUEST FOR ORAL ARGUMENT

Holly does not believe an oral argument is necessary in this matter. Should the Appellate Court wish to hear form the parties, Holly respectfully requests an opportunity to participate in oral argument.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appellee's Reply Brief was served by electronic filing and electronic delivery via the EDMS system on November 21, 2025, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.315(1)(b).

By *__/s/ Sydnee Waggoner__*
Sydnee M. Waggoner

CERTIFICATE OF FILING

The undersigned hereby certifies that the foregoing Appellee's Reply Brief was filed with the Iowa Supreme Court by electronically filing the same on November 21, 2025, pursuant to Iowa R. App. P. 6.901(3) and Iowa R. Elec. P. 16.302(1).

By */s/ Sydnee Waggoner*
Sydnee M. Waggoner

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Cambria in 14 pt. and contains 5,580 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/Sydnee Waggoner November 21, 2025
Signature 01/21/2025