IN THE SUPREME COURT OF IOWA

NO. 16-1794

STORY COUNTY NO. CDDM012128

Upon the Petition of
LYNN MARIE LARSEN,

Petitioner/Appellee,

And Concerning
ROGER WAYNE LARSEN,

Respondent/Appellant.

APPEAL FROM THE IOWA DISTRICT COURT FOR STORY COUNTY
HONORABLE MICHAEL J. MOON, JUDGE

RESISTANCE TO APPLICATION FOR FURTHER REVIEW OF THE COURT OF APPEALS DECISION FILED JULY 6, 2017

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QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals enter a decision in conflict with prior Supreme Court decisions when its calculation of the costs of attendance included expenses associated with sorority life and failed to include loans and possible employment when determining the child's contribution?

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SUMMARY OF FACTS

The Appellee, Lynn Jones, concurs with the Facts and Prior Proceedings as presented in the Court of Appeals decision entered on July 6, 2017.

ARGUMENT

I. THE APPEALS COURT CORRECTLY CALCULATED THE COSTS OF ATTENDANCE AND WAS NOT IN CONFLICT WITH PREVIOUS DECISIONS OF THE SUPREME COURT.

Roger contends the Court of Appeals expanded previous holdings by the Iowa Supreme Court but Roger's interpretation of previous case law on this subject is simply too narrow. The Iowa Supreme Court has previously recognized that the costs of a college education are not limited to tuition, books, supplies, and room and board but also include the opportunity for "social, cultural, and educational experiences outside the classroom." *In re Marriage of Vannausdle*, 889 N.W.2d 885, 889 (Iowa 2003); *See also In re Marriage of Goodman*, 690 N.W.2d 279, 284 (Iowa 2004) (sorority dues and cash allowance). Roger contends that the decision in *Goodman* stands for the proposition that sorority dues or a cash allowance can *only* be included in costs of attendance if the parties have had some type of previous agreement. As stated by the Court of Appeals, *Goodman* and *Vannausdle* both should be

read more broadly to acknowledge that there are many additional expenses associated with the "social side of college" that go beyond tuition, books, etc. and that these expenses needed to be considered under the specific facts of each case. In regard to a cash allowance, *Goodman* clearly states, "A cash allowance is necessary for a college student to participate in the social, cultural, and educational experiences outside the classroom." *Id.* at 284. It does not appear to be at all dependent on an agreement of the parties and the Court in *Goodman* only used the previous agreement of the parties to determine a reasonable amount of a cash allowance. *Id.*

The District Court and the Court of Appeals calculated the costs of attendance at an amount slightly lower then provided by Iowa State University. Iowa State University estimated the cost of attendance for Fall 2016 and Spring 2017 at $20,000 which includes $2,430 for anticipated personal expenses. (App. 80, Exhibit 1). The District Court found that the total costs of attendance for H.M.L. was $19,889.20. The total for sorority dues ($1,920) and a cash allowance ($600) included by the District Court and Court of Appeals is very close to the University's own estimated costs for personal expenses and should be considered reasonable. There are many other expenses associated with the costs of attendance that the District Court

and Court of Appeals did not include such as transportation, clothing, medical expenses, cellular telephone, athletic events, etc. that will all ultimately be the responsibility of H.M.L. Even Roger acknowledged that his calculations did not include any consideration for additional expenses like parking, gas, transportation, clothes, eating a meal off campus, or dorm room supplies while at the same time admitting that there were going to be additional expenses that H.M.L. would have to pay for herself. (App. 72-74).

A greater take away from both *Goodman* and *Vannausdle*, is that the financial condition of each parent and their ability to pay should be considered when determining what expenses to include in the costs of attendance. *Goodman*, 690 N.W.2d at 284; *Vannausdle,* 889 N.W.2d at 887; *see also* Iowa Code §598.21F(2)(2016). In this matter, the parties had saved a significant amount towards each of the children's education costs during their marriage. At the time of the divorce, the 529 account for the benefit of H.M.L. totaled $63,107.24 and the division of this account resulted in each party having an account of over $30,000 to apply towards their share of a post-secondary education subsidy. Given the financial circumstances of the parties and availability of financial resources it was reasonable for both the

District Court and Court of Appeals to include sorority dues and a limited cash allowance in the total costs of attendance.

II. THE APPEALS COURT CORRECTLY CALCULATED THE CHILD'S CONTRIBUTION AND WAS NOT IN CONFLICT WITH PREVIOUS DECISIONS OF THE SUPREME COURT.

As with the issue above, Roger's interpretation of previous decisions by the Supreme Court is too narrow. Roger again asserts that any availability of student loans *shall* be applied to the child's contribution unless the parents have agreed otherwise or have not raised the issue before the court. Contrary to Roger's assertion, the Iowa Supreme Court has held that all the child's financial resources should be considered by the court but not necessarily applied towards their contribution. *Vannausdle*, 668 N.W. 2d at 889-890; *see also In re Marriage of Vaughan*, 812 N.W.2d 688, 695 (Iowa 2012). As in all these matters, a court sitting in equity has the flexibility to consider the particular facts in a case and apply the law in a way the court believes is fair and equitable. *In re Marriage of Zeliadt*, 390 N.W.2d 117, 120 (Iowa 1986).

Roger takes issue with the District and Appeals Court for not including the availability of student loans in Hannah's contribution. If the availability of loans automatically applied towards a child's contribution,

there would hardly ever be a reason to order a post-secondary education subsidy because children could most likely always have some type of loans available to finance the entirety of their education. As the District Court found in this case, after considering the availability of the unsubsidized loan, "there is no reason for Hannah to incur student debt when she has earned scholarships and her parents have sufficient sums of money earmarked for her education." (App. 133, Amended Order). The parties clearly made a concerted effort to aggressively save for their children's college educations. Even if the parties had not saved so aggressively, they each make a sufficient income so that it would not be a hardship to contribute to their daughter's post-secondary education.

Roger also argues that the balance of Hannah's bank account and her potential earnings should be considered by the court. As stated by the Court of Appeals, Roger's assertions about Hannah's earnings are simply too speculative to include or rely on. The limited resources she had available in the bank were considered but these funds will be used to pay her share of her college expenses. Contrary to Roger's assertion the Court of Appeals held "the child bore no responsibility for payment for her education of any kind," H.M.L. will responsible for at least one-third of her education expenses not

all of which are covered by scholarships and will require her to use the limited resources she has available. (Application for Further Review, p. 9).

Previous Supreme Court decisions clearly allow courts the discretion, based on the specific facts of a case, to determine an equitable amount for the child to contribute. This is exactly what both the District Court and the Court of Appeals did when determining that offered but unaccepted loans should not be included in the child's contribution and that the child's other possible resources should not be applied towards her contribution.

CONCLUSION

Appellee, Lynn Jones, respectfully requests Roger's Application for Further Review be denied and procedendo enter immediately.

Respectfully Submitted,

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CERTIFICATE OF COST

I hereby certify that the actual amount paid for printing of the necessary copies of Appellee's Resistance to Application for Further Review in final form was the sum of $0.00, exclusive of service tax and postage, and that amount has been actually paid in full by me.

By: _____
Nicole S. Facio

CERTIFICATE OF COMPLIANCE

1. This Resistance complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Brief contains 1217 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

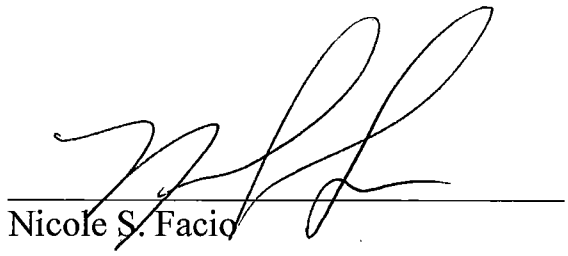
2. This Resistance complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 font size and Times New Roman type style.

By: _____ Date: 8/4/17
Nicole S. Facio

CERTIFICATE OF SERVICE AND CERTIFICATE OF FILING

I, Nicole S. Facio, hereby certify that I, or a person acting on my behalf, served the within Resistance to Application for Further Review on the 4th day of August, 2017, by submitting the document via electronic filing with the Clerk of the Supreme Court. The following participants in the case who are registered with EDMS will be served by EDMS.

Erin M. Carr
Attorney for Appellant

By: 
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