

SUPREME COURT OF NORTH DAKOTA

Ashley Marie Cull v. Andrew James Cull

2026 ND 10 (N.D. 2026) · No. 20250303 · Decided January 29, 2026

SUMMARY

The North Dakota Supreme Court affirmed the denial of Ashley Cull’s motion to modify primary residential responsibility for the parties’ children. The court held she failed to establish a prima facie case of a material change in circumstances and that modification was necessary to serve the children’s best interests, emphasizing the need for competent, firsthand evidence.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Douglas A. Bahr; Lisa Fair McEvers, Chief Justice; Daniel J. Crothers; Jerod E. Tufte; Jon J. Jensen
JURISDICTION	Supreme Court of North Dakota
DECIDED	January 29, 2026
DOCKET	20250303
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ashley Cull appealed the district court's denial of her motion to modify primary residential responsibility for the parties' two minor children without an evidentiary hearing.
STANDARD OF REVIEW	Whether a party has established a prima facie case for a change of primary residential responsibility is a question of law reviewed de novo.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Ashley Marie Cull v. Andrew James Cull

TOPICS

- child custody
- family law procedure
- appellate procedure
- standard of review
- family law

PRACTICE AREAS

- family law
- child custody
- appellate procedure

QUESTIONS PRESENTED

1. Whether Ashley Cull established a prima facie case under N.D.C.C. § 14-09-06.6 sufficient to require an evidentiary hearing on modification of primary residential responsibility.
2. Whether the district court improperly disregarded or weighed Ashley Cull's declarations and supporting materials.
3. Whether extended-family childcare, the children's behavioral and academic difficulties, or an isolated safety lapse constituted a material change in circumstances.

HOLDINGS

1. When a party seeks modification of primary residential responsibility more than two years after the prior order, the party must establish a prima facie case showing a material change in circumstances based on facts arising since and unknown at the time of the prior order, and that modification is necessary to serve the child's best interests. The party is entitled to an evidentiary hearing only after making that prima facie showing.
2. Extended-family involvement in childcare does not constitute a material change in circumstances absent competent evidence that the arrangement adversely affects the children. A parent's occupation cannot serve as a new basis for modification when the occupation and its demands were known to the court when the prior residential-responsibility order was entered.
3. Evidence that children are experiencing behavioral or academic difficulties does not establish a prima facie material change without competent evidence connecting those difficulties to the other parent's parenting or residential arrangement.
4. Potential endangerment may constitute a material change in circumstances and support an evidentiary hearing, but an isolated incident does not automatically establish a material change. Here, the January 22, 2025 pickup incident did not establish a prima facie case because the competent evidence showed no pattern of endangerment, deliberate neglect, or systemic failure in Andrew's care.

KEY QUOTATIONS

“A prima facie case is a bare minimum and requires facts which, if proved at an evidentiary hearing, would support a change of custody that could be affirmed if appealed.” (¶ 8)

“However, while potential endangerment may constitute a significant change in circumstances and raise a prima facie case for modification, an isolated incident does not automatically mandate a finding of material change.” (¶ 22)

FACTUAL BACKGROUND

Ashley and Andrew Cull divorced in 2022, with Andrew awarded primary residential responsibility for their two children. In 2025, Ashley sought modification based on Andrew's farming occupation, alleged reliance on his mother for childcare, alleged lack of structure and school involvement, and an isolated incident in which the children were not promptly picked up from church school in subzero temperatures. The court concluded the supporting declarations contained insufficient firsthand and competent information, did not establish a causal

connection between Andrew's parenting and the children's school difficulties, and did not show that the isolated safety incident reflected a material change in circumstances.

PROCEDURAL HISTORY

The parties divorced in January 2022, and an amended judgment entered in March 2022 awarded Andrew Cull primary residential responsibility. In February 2025, Ashley Cull moved under N.D.C.C. § 14-09-06.6 to modify primary residential responsibility. The district court denied the motion, concluding she had not established a prima facie case of a material change in circumstances or that modification was necessary to serve the children's best interests. The Supreme Court of North Dakota reviewed the issue de novo and affirmed.

DISPOSITION

affirmed

CASES CITED

- Weber v. Pennington, 2025 ND 105, 22 N.W.3d 726
- Anderson v. Spitzer, 2022 ND 110, 974 N.W.2d 695
- Kerzmann v. Kerzmann, 2021 ND 183, 965 N.W.2d 427
- Jensen v. Jensen, 2023 ND 22, 985 N.W.2d 679
- Carvalho v. Carvalho, 2025 ND 129, 23 N.W.3d 890
- Klundt v. Benjamin, 2021 ND 149, 963 N.W.2d 278
- McCay v. McCay, 2024 ND 130, 9 N.W.3d 687
- Tank v. Tank, 2004 ND 15, 673 N.W.2d 622
- Volz v. Peterson, 2003 ND 139, 667 N.W.2d 637
- Johnson v. Staiger, 2025 ND 198, 27 N.W.3d 692