

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAY 20 2026

Shirley A. Johnson Legal
Clerk

STATE OF SOUTH DAKOTA

IN SUPREME COURT

JOSHUA ROSS,

Plaintiff and Appellee,

v.

HANNAH COLE,

Defendant and Appellant.

Supreme Court Case No.: 31466

On Appeal from the Circuit Court

Fourth Judicial Circuit, Meade County

Case No. 46DIV25-000045

APPELLANT'S BRIEF

Hannah Cole
Pro Se Appellant
914 Main Ct S
Bloomer, WI 54724
(715) 210-7539
h.ruth.s2018@gmail.com

31466

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES	iii
STATEMENT OF THE CASE	iv
STATEMENT OF FACTS.....	v
STANDARD OF REVIEW.....	vii
ARGUMENT	1
I. THE CIRCUIT COURT FAILED TO PROVIDE ANY FINDINGS OR EXPLANATION SUFFICIENT TO PERMIT MEANINGFUL APPELLATE REVIEW	1
II. THE CIRCUIT COURT DENIED APPELLANT A MEANINGFUL OPPORTUNITY TO BE HEARD	5
III. THE CIRCUIT COURT ERRED BY DENYING APPELLANT'S MOTION TO RECONSIDER AND SUPPLEMENT THE RECORD WITHOUT ADDRESSING THE DEFICIENCIES IN THE PROCEEDINGS	11
IV. THE CIRCUIT COURT ERRED BY RELYING ON PRIOR PROCEEDINGS INSTEAD OF EVALUATING CURRENT CIRCUMSTANCES AS REQUIRED FOR A CUSTODY MODIFICATION	14
V. THE CIRCUIT COURT FAILED TO CONDUCT A CURRENT BEST-INTEREST ANALYSIS AND IMPROPERLY RELIED ON PRIOR RULINGS WITHOUT AN EVIDENTIARY RECORD	19
VI. REASSIGNMENT ON REMAND IS APPROPRIATE TO ENSURE A FULL AND FAIR EVIDENTIARY HEARING	24
CONCLUSION AND RELIEF REQUESTED	28
CERTIFICATE OF COMPLIANCE	30
APPENDIX INDEX	31

TABLE OF AUTHORITIES

Cases

Fuerstenberg v. Fuerstenberg, 1999 S.D. 35, 591 N.W.2d 798.....	12, 14, 17, 19
Jasper v. Jasper.....	12, 19, 22
Liteky v. United States, 510 U.S. 540 (1994).....	24
Offutt v. United States, 348 U.S. 11 (1954).....	24
United States v. Robin, 553 F.2d 8 (2d Cir. 1977).....	24
Ochs v. Nelson.....	12

Statutes

SDCL 15-6-52(a).....	1, 12
----------------------	-------

STATEMENT OF ISSUES

1. Whether the Circuit Court erred by failing to make findings of fact or conclusions of law sufficient to permit meaningful appellate review.
2. Whether the Circuit Court denied Appellant a meaningful opportunity to be heard in violation of due process by failing to conduct a proper evidentiary hearing, including the absence of sworn testimony and the inability to present evidence.
3. Whether the Circuit Court erred by failing to meaningfully consider and develop an evidentiary record prior to issuing its decision.
4. Whether the Circuit Court erred by denying Appellant's Motion to Reconsider and Supplement the Record without addressing the deficiencies in the proceedings.
5. Whether the Circuit Court improperly relied on prior proceedings rather than evaluating current circumstances as required for a custody modification.
6. Whether the Circuit Court failed to conduct a current best interest analysis and instead relied on prior rulings without an evidentiary record.
7. Whether reassignment on remand is appropriate to ensure a full and fair evidentiary hearing.

STATEMENT OF THE CASE

This appeal arises from a custody matter involving the parties' minor child.

The parties have been subject to prior custody proceedings resulting in an oral ruling in 2023 and a written order entered in 2024. Following appellate review, the matter was remitted and jurisdiction returned to the Circuit Court.

On March 10, 2026, Appellant filed a Motion to Modify Custody and Parenting Time, along with related motions, including an Emergency Motion for Temporary Restraining Order, Request for Injunction Sanctions, Request for Independent Medical Review, and supporting affidavit.

The Circuit Court scheduled a hearing on the pending motions for April 7, 2026.

A hearing was held on April 7, 2026. Following that hearing, no evidentiary record was developed.

On April 8, 2026, Appellant filed a Motion to Reconsider and Supplement the Record.

On April 9, 2026, the Circuit Court issued an Order Denying Motions Following April 7, 2026 Hearing. The Order denied all pending motions.

The Order did not include findings of fact or conclusions of law explaining the basis for the Court's decision.

Appellant timely filed a Notice of Appeal seeking review of the Circuit Court's April 9, 2026 Order.

STATEMENT OF FACTS

The parties share a minor child and have been subject to prior custody proceedings resulting in an oral ruling in 2023 and a written order entered in 2024. Since entry of that order, the custody arrangement has remained in place without modification.

Appellant's March 10, 2026 Motion to Modify Custody and Parenting Time was based on circumstances arising after the most recent prior order, including new and continuing concerns affecting the minor child and the child's well-being.

On March 10, 2026, Appellant filed a Motion to Modify Custody and Parenting Time, along with related motions, raising concerns regarding the minor child's care, medical needs, and decision-making. In support of her motion, Appellant submitted an affidavit outlining the basis for modification and the issues affecting the child.

In preparation for the April 7, 2026 hearing, Appellant also prepared additional documentation and exhibits addressing the issues raised, including information relevant to the child's care and best interests.

A hearing was held on April 7, 2026. During that hearing, no sworn testimony was taken from either party. Appellant was not permitted to present testimony or formally introduce exhibits prepared in support of her motions. No witnesses were sworn, and no evidence was admitted into the record.

During the proceedings, the Court referenced prior rulings, including prior out-of-state proceedings and prior appellate proceedings, in the context of addressing Appellant's current motions.

Appellant attempted to raise concerns and provide information relevant to the minor child's current circumstances, including issues that arose after the prior custody order. However, the hearing did not proceed as a full evidentiary hearing, and no formal record of sworn testimony was created.

On April 8, 2026, Appellant filed a Motion to Reconsider and Supplement the Record in an effort to address the absence of a developed record and to allow the Court to consider the information and concerns that had not been formally

presented during the hearing.

On April 9, 2026, the Circuit Court issued an Order Denying Motions Following April 7, 2026 Hearing. The Order denied all pending motions, including Appellant's Motion to Modify Custody and Parenting Time, Emergency Motion for Temporary Restraining Order, Request for Injunction Sanctions, Request for Independent Medical Review, and Motion to Reconsider and Supplement the Record.

The Order did not include findings of fact or conclusions of law addressing the issues raised by Appellant or explaining the basis for the Court's decision.

As a result, the custody arrangement remained unchanged without a full evidentiary review of the concerns presented and without the development of a record reflecting the child's current circumstances.

STANDARD OF REVIEW

Whether a trial court has complied with due process requirements is a question of law reviewed de novo. A denial of a meaningful opportunity to be heard, including the failure to allow the presentation of evidence or testimony, is reviewed without deference to the trial court.

A trial court's findings of fact are reviewed under the clearly erroneous standard. However, where no findings are made, or where the record is insufficient to permit meaningful appellate review, reversal may be required.

Custody determinations and decisions on motions to modify custody are generally reviewed for an abuse of discretion. However, a court abuses its discretion when it fails to apply the correct legal standard, fails to consider relevant factors, or bases its decision on an incomplete or undeveloped record.

Whether the trial court applied the correct legal standard in evaluating a motion to modify custody, including whether it properly considered current circumstances and the best interests of the child, is reviewed de novo.

Finally, whether reassignment on remand is appropriate is within the authority of the appellate court and may be ordered where necessary to preserve the appearance and reality of a fair and impartial proceeding.

ARGUMENT

I. THE CIRCUIT COURT FAILED TO PROVIDE ANY FINDINGS OR EXPLANATION SUFFICIENT TO PERMIT MEANINGFUL APPELLATE REVIEW

South Dakota law requires that when a court resolves factual issues, it must provide findings of fact and conclusions of law sufficient to permit meaningful appellate review. While such findings may be stated orally on the record, the court must still articulate the basis of its decision so that a reviewing court can determine what facts were found, what evidence was relied upon, and whether the correct legal standards were applied.

SDCL 15-6-52(a) provides:

“In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment. Findings of fact and conclusions of law are unnecessary on decisions of motions under § 15-6-12 or § 15-6-56 or any other motion except as provided in § 15-6-41(b). It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court.”

Thus, even where formal written findings are not required, the rule still mandates that the court articulate its factual findings and legal reasoning on the record following the close of the evidence.

In the present case, the Circuit Court failed to provide any such findings or explanation.

The transcript confirms that the Court did not identify what evidence it relied upon, did not resolve disputed factual issues, and did not articulate any reasoning supporting its rulings.

Instead, the Court relied on prior proceedings rather than evaluating the issues presented at the hearing. For example, the Court stated:

“Didn’t we just go through this less than a year ago... and it was appealed... and they affirmed that... and now... you’re asking me to revisit the same issue?”. (Appx. 70-71, lines 23- 5)

This statement demonstrates that the Court treated the matter as previously resolved rather than conducting an independent evaluation of the current circumstances presented.

The Court then proceeded to issue summary rulings without explanation. In denying the motion to modify custody, the Court stated:

“I’ve heard enough. I’m going to deny that motion also.” (Appx. 74, Lines 3-4)

No findings of fact or conclusions of law accompanied this ruling. Instead, the Court relied on generalized and conclusory statements, including:

“This has been going on since the child was very young. Wisconsin has established an order...”
(Appx. 74 11- 14)

These statements do not identify any evidence considered during the hearing and do not constitute findings sufficient for appellate review.

The transcript further demonstrates that the Court ruled without a developed or reliable evidentiary basis. During the proceedings, Appellant presented exhibits and raised specific factual deficiencies, including the absence of a primary care basis for a medical referral and the lack of recent medical documentation.

Despite these issues, the Court did not resolve the factual disputes or evaluate the evidence presented. Instead, the Court acknowledged uncertainty regarding the central issue before ruling. Specifically, the Court questioned:

“So does she need this tonsillectomy now?” Appx (. 83 Line 4)

In response, the opposing party admitted:

“That’s what I was hoping to find out when we go to our next checkup...”
(Appx. 83 Line 5-6)

The Court further acknowledged that the medical records before it were outdated, stating:

“these records are a year and a half old...” (Appx. 83 Line 8)

Despite recognizing that the evidence was stale and that the necessity of the procedure was uncertain, the Court nevertheless denied the motion without making any findings or requiring further evidentiary development.

The transcript also reflects that the Court made credibility determinations and best-interest conclusions without the benefit of any evidentiary record. For example, the Court stated:

“I don’t know why the father would make up a story...” (Appx. 83 Line 16-17)

and later concluded:

“It sounds like he is acting in her best interest, so I don’t have an issue with it.”
(Appx. 85 Lines 10-12)

These statements reflect determinations regarding credibility and the child’s best interest despite the absence of sworn testimony, admitted evidence, or a developed factual record.

The deficiencies in the Court’s reasoning continued throughout the remainder of the proceedings. Rather than evaluating the evidence presented, the Court repeatedly relied on prior custody determinations as a substitute for current factual analysis. For example, the Court stated:

“before this case came here, a judge in Wisconsin had determined that he was the sole legal custodian.” (Appx. 84 Line 10-12)

The Court then issued conclusions regarding parental decision-making without identifying any evidentiary basis, stating:

“the father is the sole custodian and he’ll make the call appropriately.” (Appx. 84 Lines 22- 23)

and:

“It sounds like he is acting in her best interest, so I don’t have an issue with it.”
(Appx. 85 Lines 10-12)

These statements reflect conclusions regarding the child’s best interest without reference to any admitted evidence or developed factual record.

The Court further resolved disputed factual issues without making findings or identifying any evidentiary support. For example, in addressing allegations of misrepresentation, the Court stated:

“I don’t see anything... that indicates that she made up a story...” (Appx. 86 Line 23- 24)

and:

“you don’t have anything that indicates that she misrepresented anything.” (Appx. 87 Lines 3-4)

These determinations reflect credibility and factual findings made without sworn testimony, admitted exhibits, or a developed evidentiary record.

Throughout the proceedings, the Court repeatedly issued summary rulings without explanation, including:

“I’ve denied it.” (Appx. 85 Line 21)

and:

“Motion’s denied.” (Appx. 91 Line 25)

At no point did the Court articulate what facts it found, what evidence it relied upon, or how it applied the law to those facts. Instead, the rulings consist of conclusory statements and summary denials, which do not satisfy the requirement that a court provide findings sufficient to permit meaningful appellate review.

Because the Circuit Court failed to comply with *SDCL 15-6-52(a)* and failed to provide findings of fact or conclusions of law—either orally on the record or in its written order—and because it ruled without a developed evidentiary basis, its decision lacks the foundation necessary for meaningful appellate review. Accordingly, reversal is required, and the matter should be remanded for a full evidentiary hearing at which findings of fact and conclusions of law are properly entered.

II. THE CIRCUIT COURT DENIED APPELLANT A MEANINGFUL OPPORTUNITY TO BE HEARD

The Fourteenth Amendment to the United States Constitution and Article VI, § 2 of the South Dakota Constitution guarantee that no person shall be deprived of liberty without due process of law. At a minimum, due process requires that a party be afforded notice and a meaningful opportunity to be heard.

In matters involving custody and the best interests of a minor child, these protections are especially critical. A meaningful opportunity to be heard includes the ability to present evidence, offer testimony, and develop a factual record upon which the court may base its decision.

In the present case, Appellant was not afforded a meaningful opportunity to be heard.

Although a hearing was held on April 7, 2026, the proceeding did not function as a true evidentiary hearing. No sworn testimony was taken from either party, no witnesses were called, and no exhibits were formally admitted into evidence. As a result, no evidentiary record was developed.

A. Appellant Was Deprived of Control Over the Presentation of Her Case

The transcript demonstrates that Appellant lacked control over the presentation of her case from the outset of the hearing. When Appellant attempted to address the scope and substance of her motions, the Court immediately restricted how the matters would be presented, stating:

“No, we’re going to talk about them in this order now.” (Appx. 68 Line 20-21)

This directive removed Appellant’s ability to structure her own presentation and limited her ability to explain how the issues were interconnected.

B. The Court Directly Limited Appellant's Ability to Present Argument

The transcript further reflects direct limitations placed on Appellant's ability to present argument and explain factual matters. When Appellant attempted to clarify the circumstances surrounding her claims, the Court interrupted and instructed:

"Don't argue, Ms. Cole. I need to get this understood." (Appx. 69 Lines 15-16)

This statement expressly restricted Appellant's ability to present her argument and develop the factual basis of her claims.

C. Appellant Was Prevented From Fully Addressing the Issues Presented

Throughout the proceedings, the Court repeatedly interrupted and redirected Appellant away from fully addressing the issues she raised. When Appellant attempted to explain new and worsening circumstances supporting her custody motion, the Court interrupted and shifted focus to prior proceedings, stating:

"Didn't we just go through this less than a year ago..." (Appx. 70 Line 23)

Similarly, when Appellant began to explain concerns regarding medical care, the Court curtailed further explanation and redirected the discussion:

"We're going to get to that... that's another one of your motions..." (Appx. 72 Line 2-3)

These repeated interruptions and redirections prevented Appellant from fully addressing the factual basis of her claims in a complete and coherent manner.

D. Appellant Was Not Permitted to Meaningfully Present Evidence or Develop the Record

The limitations on Appellant's ability to be heard extended beyond interruption and control of presentation. Even when permitted to speak, Appellant was not allowed to meaningfully develop the factual basis of her claims.

Appellant attempted to introduce documentary evidence in support of her position, stating:

“as you can see, there's quite a few exhibits attached...” (Appx. 75 Lines 19-20)

However, the Court did not establish any process for admitting or evaluating these exhibits and did not engage with the substance of the evidence.

Instead of permitting Appellant to present supporting facts, the Court repeatedly redirected the discussion toward conclusory determinations. For example, when Appellant attempted to address the medical basis for a proposed procedure, the Court reduced the issue to a single, outcome-driven question:

“Well, do you agree that the emergency surgery was necessary or not?” (Appx. 76 Lines 7-8)

This approach prevented Appellant from presenting the underlying medical evidence and reasoning supporting her position.

Similarly, when Appellant attempted to explain deficiencies in the factual basis for the procedure, she stated:

“It was not based off of a primary care referral... it was just based off of statements...” (Appx. 77 Line 6- 9)

Yet no opportunity was provided to further develop this issue through testimony or documentary evidence. The Court ultimately framed the issue in conclusory terms, asking:

“So does she need this tonsillectomy now?” (Appx 83 Line 4)

This line of questioning reflects that the Court moved directly to a final determination without allowing Appellant to build the evidentiary foundation necessary to support her claims.

E. The Court Terminated Appellant’s Presentation Before Completion

Most significantly, the Court prevented Appellant from presenting evidence contradicting the opposing party’s statements. After Appellant attempted to introduce documentation demonstrating that medical care had not been properly maintained, she stated:

“Your Honor, I actually have something to show...” (Appx. 74 Line 5)

The Court did not allow this evidence to be presented and instead immediately ruled:

“I’ve heard enough. I’m going to deny that motion also.” (Appx. 74 Lines 3-4)

This sequence demonstrates that Appellant was cut off before completing her presentation and was not permitted to fully present evidence prior to the Court’s ruling.

F. Appellant Was Not Afforded an Opportunity to Respond to or Challenge the Court’s Conclusions

The due process deficiencies continued through the conclusion of the hearing, where Appellant was not afforded a meaningful opportunity to respond to or challenge the Court’s determinations. The Court reached conclusions regarding the child’s best interests without providing Appellant an opportunity to rebut those findings, stating:

“It sounds like he is acting in her best interest, so I don’t have an issue with it.”
(Appx. 85 Line 10-11)

Similarly, the Court made credibility determinations and resolved factual disputes without allowing Appellant to present rebuttal evidence or challenge those conclusions. For example, the Court stated:

“I don’t see anything... that indicates that she made up a story...” (Appx. 86-87
Lines 23-4)

and:

“you don’t have anything that indicates that she misrepresented anything.”
(Appx. 87 Line 3-4)

These conclusions were reached without affording Appellant an opportunity to present additional evidence, clarify the record, or respond to the Court’s determinations.

The Court then issued final rulings without permitting any further input from Appellant, stating:

“I’ve denied it.” (Appx. 85 Line 21)

and:

“Motion’s denied.” (Appx. 91 Line 25)

This sequence demonstrates that Appellant was not afforded a meaningful opportunity to respond to or challenge the Court’s conclusions before final rulings were issued.

G. The Proceedings Did Not Constitute a Meaningful Hearing

Due process requires more than the mere occurrence of a hearing in name only. It requires a meaningful opportunity to present one’s case. Where a party is deprived of control over presentation, directly limited in argument, repeatedly interrupted and redirected, prevented from introducing evidence, unable to develop a factual record, and ultimately cut off before

completing their case or responding to the Court's conclusions, the essential requirements of due process are not satisfied.

Because Appellant was not afforded a meaningful opportunity to present evidence, develop a record, or fully be heard, the proceedings violated due process under both the United States Constitution and the South Dakota Constitution.

Accordingly, reversal is required, and the matter should be remanded for a full evidentiary hearing at which Appellant is afforded a meaningful opportunity to present testimony and evidence.

III. THE CIRCUIT COURT ERRED BY DENYING THE APPELLANT'S MOTION TO RECONSIDER AND SUPPLEMENT THE RECORD WITHOUT ADDRESSING THE DEFICIENCIES IN THE PROCEEDINGS

A motion to reconsider and supplement the record provides the trial court with the opportunity to correct errors, address procedural deficiencies, and ensure that the record is sufficiently developed to support a lawful and reviewable decision.

Following the April 7, 2026 hearing, Appellant filed a Motion to Reconsider and Supplement the Record on April 8, 2026. The motion was filed in direct response to the deficiencies in the proceedings and specifically identified the absence of sworn testimony, the lack of admitted exhibits, the failure to develop an evidentiary record, and the resulting inability to conduct a meaningful review of the Court's custody determinations.

The motion further sought to provide the Court with the opportunity to consider information and evidence that had not been formally presented during the hearing due to the manner in which the proceedings were conducted.

Thus, the Court was placed on clear notice that its prior ruling lacked a sufficient factual and evidentiary foundation. Appellant specifically identified that no testimony had been taken, no exhibits had been admitted, and no developed record existed upon which the Court could properly base a custody determination.

Despite being placed on notice of these deficiencies, the Circuit Court denied the motion without addressing any of the issues raised and without providing any explanation for its decision. The Court did not dispute the absence of testimony, the lack of admitted evidence, or the incomplete state of the record. Nor did the Court reopen the proceedings, permit supplementation sufficient to cure the deficiencies, or conduct an evidentiary hearing to properly develop the factual record.

Instead, the Court allowed its prior ruling to stand unchanged despite the acknowledged deficiencies in the proceedings.

This failure to reconsider or supplement the record compounded the procedural defects already present in the case. Rather than correcting the absence of an evidentiary foundation, the Court declined to take any action necessary to ensure that its custody determination rested upon properly developed facts and admissible evidence.

In custody matters, South Dakota law requires courts to conduct a structured and systematic evaluation of the child's best interests. *Fuerstenberg v. Fuerstenberg*. That analysis necessarily depends upon a developed evidentiary record.

South Dakota law further recognizes that custody determinations must rest upon evidence presented to the court. In *Jasper v. Jasper*, the South Dakota Supreme Court reversed a custody determination where "there was no relevant evidence, facts, or testimony presented at trial, put in issue, tried, evaluated, or determined by the trial court..." and explained that "SDCL 15-6-52(a) requires the trial court to present the facts that form the basis for its conclusions of law and judgment."

The Court further explained that a trial court's discretion "must have a sound and substantial basis in the testimony." *Jasper v. Jasper*.

Similarly, South Dakota courts have recognized that findings and conclusions must be supported by evidence contained within the record. See *Ochs v. Nelson*.

Here, the Motion to Reconsider and Supplement the Record provided the Circuit Court with the opportunity to correct the same deficiencies identified in the underlying proceedings, including the absence of testimony, the lack of admitted evidence, the failure to develop a factual record, and the lack of findings sufficient for review.

Unlike cases in which deficiencies are corrected through further proceedings or supplementation of the record, the Circuit Court here declined to take corrective action and instead allowed the decision to stand without a sufficient evidentiary basis.

The deficiencies identified in the Motion to Reconsider mirrored the same procedural failures demonstrated throughout the hearing itself, including the absence of sworn testimony, the failure to admit evidence, and the lack of articulated findings. By declining to address or correct these issues after they were specifically raised, the Court compounded the original error and ensured that the decision remained unsupported by a properly developed record.

A trial court's refusal to reconsider or supplement the record, particularly where the record is incomplete, undermines the fairness and reliability of the proceedings. This is especially significant in custody matters, where decisions affecting a child's welfare must rest upon a full and accurate evidentiary foundation.

By denying Appellant's motion without explanation and without addressing the identified deficiencies in the proceedings, the Circuit Court failed to ensure that its decision was supported by a complete and properly developed factual record.

Accordingly, the denial of Appellant's Motion to Reconsider and Supplement the Record was error and further supports reversal. This matter should be remanded for a full evidentiary hearing and proper development of the record.

IV. THE CIRCUIT COURT ERRED BY RELYING ON PRIOR PROCEEDINGS INSTEAD OF EVALUATING CURRENT CIRCUMSTANCES AS REQUIRED FOR A CUSTODY MODIFICATION

In custody modification proceedings, South Dakota law requires the circuit court to evaluate the child's present circumstances and determine whether modification is necessary to serve the child's current best interests. A court may not deny a motion for modification merely because similar issues were previously litigated. Rather, the court must evaluate whether circumstances have materially changed since the prior order and whether the child's current welfare requires further review. See *Fuerstenberg v. Fuerstenberg*.

Here, the record demonstrates that the Circuit Court repeatedly relied upon prior proceedings, prior rulings, and the previous appellate affirmance instead of meaningfully evaluating Appellant's allegations regarding worsening conditions and ongoing concerns affecting Payton's welfare.

During the hearing, when Appellant began explaining the basis for her request to modify custody and parenting time, the Court immediately shifted focus to the prior proceedings, stating:

“Didn’t we just go through this less than a year ago, and it was appealed to the South Dakota Supreme Court...” (Appx. 70 Line 23-24)

The Court then continued:

“I denied it. You appealed it to the South Dakota Supreme Court, and they affirmed that. And so, now, here we are just a short time after the affirmance by the South Dakota Supreme Court, and you’re asking me to revisit the same issue?” (Appx. 71 Line 4-8)

These statements support that the Court framed Appellant's motion as merely an attempt to relitigate prior proceedings rather than evaluating whether circumstances had materially changed since the prior order.

Importantly, Appellant directly informed the Court that the circumstances had changed and had worsened since the prior proceedings. Appellant stated:

“Your Honor, this is not the same issue. It’s actually gotten progressively worse.”
(Appx. 71 9-10)

Appellant further explained:

“Mr. Ross, prior to this, was not – stating that I had no rights.” (Appx. 71 Line 12-13)

These statements support that Appellant was alleging new and escalating concerns arising after the prior custody proceedings, including worsening communication issues and increasing exclusion from medical decision-making involving the child.

Despite Appellant’s repeated explanation that the issues had escalated since the prior order, the Court continued characterizing the motion as the same issue previously litigated, stating:

“And so based upon that, you want to have custody changed just like the motion that I denied about a year ago?” (Appx. 71 Line 21-22)

This statement further supports that the Court viewed the motion through the lens of the prior litigation rather than independently assessing the child’s current circumstances and present best interests.

The Court additionally relied upon the length of the prior custody arrangement instead of evaluating whether modification was presently warranted, stating:

“Wisconsin has established an order that’s been followed by the parents for over a decade.” (Appx. 74 Line 12-14)

And further:

“This has been going on since the child was very young.” (Appx. 74 Lin 11-12)

These statements support that the Court relied upon the historical status quo and prior proceedings instead of conducting a meaningful analysis of the child's current circumstances. The Court's continued reliance on prior custody authority rather than present evaluation is further demonstrated throughout the medical dispute discussed during the hearing. Rather than independently evaluating whether the current circumstances warranted intervention or modification, the Court repeatedly defaulted to the prior custody structure.

For example, the Court stated:

“before this case came here, a judge in Wisconsin had determined that he was the sole legal custodian.” (Appx. 84 Line 10-12)

This statement supports that the Court deferred to prior Wisconsin custody determinations rather than independently evaluating the present circumstances and current disputes before the Court.

The Court further stated:

“the father is the sole custodian and he'll make the call appropriately.” (Appx. 84 Line 21)

This statement supports that the Court relied upon the existing custody structure as justification for denying relief, rather than conducting an independent evaluation of whether the current circumstances warranted intervention or modification.

Similarly, the Court stated:

“He has sole legal custody. He can make medical decisions.” (Appx. 84 Line 22-23)

These statements support that the Court repeatedly treated the prior custody order as dispositive of the present dispute, instead of evaluating whether the escalating concerns and ongoing exclusion alleged by Appellant warranted further inquiry or modification.

At the same time, Appellant continued identifying ongoing and worsening concerns affecting her involvement in the child's care. Appellant stated:

“... there's been repeated positions taken that limit communication and exclude me from decision-making regarding Payton, including statements that I do not need to be informed of appointments or involved in certain decisions, and unilateral attempts to limit my rights to visitation only.” (Appx.66 Line 2-7)

These statements support that Appellant was alleging ongoing and escalating exclusion from the child's medical care and daily life following the prior proceedings, further demonstrating that the Court was presented with allegations of worsening circumstances requiring current evaluation. Rather than conducting a structured best-interest analysis regarding these current concerns, the Court relied upon generalized assumptions derived from the prior custody structure, stating:

“It sounds like he is acting in her best interest, so I don't have an issue with it.” (Appx. 85 Line 10-12)

And further:

“I don't have an issue with it.” (Appx. 85 Line 11-12)

These statements support that the Court relied upon assumptions and the existence of prior legal authority instead of conducting a meaningful evaluation of the present circumstances affecting the child's welfare.

South Dakota law requires courts to conduct a present and meaningful best-interest analysis based upon the child's current welfare and circumstances. See *Fuerstenberg v. Fuerstenberg*. A prior custody order or prior appellate affirmance does not eliminate the Court's obligation to evaluate whether new concerns, worsening conditions, or changed circumstances warrant modification.

Here, the Court repeatedly referenced prior litigation, prior rulings, and the prior appellate affirmance while minimizing or dismissing Appellant's allegations that circumstances had deteriorated since the earlier proceedings. Rather than conducting an independent and current evaluation of the child's welfare, the Court treated the matter as an attempt to revisit previously resolved issues.

By relying upon prior proceedings instead of meaningfully evaluating the present circumstances and allegations raised in Appellant's motion, the Circuit Court failed to conduct the analysis required in a custody modification proceeding.

Accordingly, the Circuit Court erred by relying upon prior proceedings rather than evaluating the child's current circumstances and best interests, and reversal is warranted.

V. THE CIRCUIT COURT FAILED TO CONDUCT A CURRENT BEST-INTEREST ANALYSIS AND IMPROPERLY RELIED ON PRIOR RULINGS WITHOUT AN EVIDENTIARY RECORD

A. The Circuit Court Was Required to Evaluate Current Circumstances Once Changed Conditions Were Alleged

Custody determinations and custody modifications must be based upon the child's best interests as they exist at the time of the proceeding, not solely upon prior findings or historical conclusions. South Dakota law requires courts to conduct a present and meaningful evaluation of the child's welfare, including consideration of the relevant best-interest factors. See *Fuerstenberg v. Fuerstenberg*.

Where changed conditions are alleged, the Court must evaluate the current circumstances affecting the child's welfare rather than relying solely upon prior custody determinations. See *Jasper v. Jasper*.

Here, Appellant specifically alleged worsening conditions, escalating exclusion from parental involvement, interference with communication regarding the child's medical care, and ongoing conduct affecting the child's welfare.

The Court itself acknowledged that modification depended upon whether circumstances had changed, asking:

“you're asking me to revisit the same issue?” (Appx. 71 Line 7-8)

This statement supports that the Court recognized its obligation to evaluate whether current conditions differed from the prior proceedings.

In response, Appellant expressly informed the Court:

“Your Honor, this is not the same issue. It's actually gotten progressively worse.”
(Appx. 71 9-10)

Appellant further explained:

“Mr. Ross, prior to this, was not – stating that I had no rights.” (Appx. 71 Line 12-13)

These statements support that Appellant was alleging worsening and escalating conduct arising after the prior proceedings.

These statements support that Appellant alleged ongoing and worsening exclusion from the child’s care and parental decision-making following the prior proceedings, requiring present evaluation by the Court.

B. The Circuit Court Treated the Issues as Previously Resolved and Relied Upon Prior Proceedings

Rather than conducting a current best-interest analysis, the Circuit Court repeatedly framed the issues as already resolved through prior proceedings and the prior appellate affirmance.

The Court stated:

“Didn’t we just go through this less than a year ago, and it was appealed to the South Dakota Supreme Court...” (Appx. 70 Line 23-24)

The Court further stated:

“I denied it. You appealed it to the South Dakota Supreme Court, and they affirmed that. And so, now, here we are just a short time after the affirmance by the South Dakota Supreme Court, and you’re asking me to revisit the same issue?” (Appx. 71 Line 4-8)

These statements support that the Court framed Appellant’s motion as an attempt to relitigate prior proceedings rather than independently evaluating whether the child’s circumstances had materially changed.

The Court additionally relied upon the historical custody arrangement, stating:

“This has been going on since the child was very young. Wisconsin has established an order that’s been followed by the parents for over a decade.” (Appx. 74 Line 11-14)

These statements support that the Court repeatedly deferred to the prior Wisconsin custody structure and historical arrangements instead of independently evaluating whether the present circumstances warranted modification.

The Court similarly relied upon prior Wisconsin custody determinations during the hearing, stating:

“before this case came here, a judge in Wisconsin had determined that he was the sole legal custodian.” (Appx. 84 Line 10-12)

This further supports that the Court relied upon prior rulings rather than conducting a present evaluation of the child’s current welfare and circumstances.

C. No Evidentiary Record Was Developed to Support a Current Best-Interest Determination

Despite the allegations of worsening conditions and ongoing exclusion from the child’s care, the Court did not develop an evidentiary record sufficient to support a present best-interest analysis. No witnesses were sworn, no testimony was formally taken, and no exhibits were admitted into evidence. When Appellant attempted to continue presenting information, the Court stated:

“I’ve heard enough. I’m going to deny that motion also.” (Appx. 74 Lines 3-4)

This statement supports that the Court terminated further presentation before a factual record regarding the child’s current circumstances could be developed.

The Court itself acknowledged that a present factual dispute existed regarding the child’s current Medical condition, asking:

“So does she need this tonsillectomy now?” (Appx. 83 Line 4)

This statement supports that the Court recognized the existence of a current factual issue requiring evaluation, yet no testimony, medical evidence, or evidentiary record was developed sufficient to resolve the dispute.

In response, the opposing party acknowledged continuing uncertainty regarding the child's condition, stating:

“That’s what I was hoping to find out when we go to our next checkup...” (Appx. 83 Lines 5-6)

This statement further supports that the Court proceeded without a sufficiently developed record regarding the child's current medical circumstances.

The Court further acknowledged that the records before it were outdated, stating:

“these records are a year and a half old...” (Appx. 83 Line 8)

This statement supports that the Court lacked current evidentiary information regarding the child's condition, yet nevertheless proceeded without developing a present factual record.

South Dakota law requires custody determinations to rest upon evidence contained within the record. In *Jasper v. Jasper*, the South Dakota Supreme Court reversed where “there was no relevant evidence, facts, or testimony presented at trial, put in issue, tried, evaluated, or determined by the trial court...” Here, as in *Jasper*, no evidentiary record was developed sufficient to support a meaningful current best-interest determination.

The Court nevertheless relied upon the absence of evidence to reject Appellant's concerns, stating:

“you don’t have anything that indicates that she misrepresented anything.”
(Appx. 87 Lines 3-4)

This statement further supports that the Court denied relief based upon the absence of evidentiary support despite failing to permit the meaningful development of a factual record.

D. The Circuit Court Improperly Presumed the Existing Custody Structure Remained in the Child's Best Interest

Rather than evaluating the child's current circumstances, the Court repeatedly presumed that the existing custody structure remained appropriate. The Court stated:

“the father is the sole custodian and he'll make the call appropriately.” (Appx. 84 Line 22-23)

These statements support that the Court treated the prior custody order as dispositive rather than independently evaluating whether current conditions and escalating disputes warranted modification or intervention.

The Court additionally stated:

“It sounds like he is acting in her best interest, so I don't have an issue with it.” (Appx. 85 Lines 10-12)

This statement supports that the Court relied upon assumptions and the existence of prior legal authority rather than conducting a structured and evidence-based evaluation of the child's present best interests.

The Court further stated:

“I don't see anything... that indicates that she made up a story...” (Appx. 86 Lines 13-14)

This statement supports that the Court made credibility and factual determinations regarding the underlying dispute despite the absence of sworn testimony or a developed evidentiary record.

E. The Failure to Conduct a Current Best-Interest Analysis Constitutes Reversible Error

Accordingly, the Circuit Court failed to conduct the present and meaningful best-interest analysis required under South Dakota law. Rather than independently evaluating the child's current circumstances and the allegations of worsening conditions raised by Appellant, the Court repeatedly relied upon prior rulings, prior proceedings, and the existing custody structure.

Without the development of an evidentiary record reflecting present conditions, the Court's decision necessarily rests upon assumption rather than analysis and cannot be sustained on appeal.

Because the Court failed to conduct a current evidentiary evaluation of the child's best interests, reversal and remand for a full evidentiary hearing is required.

VI. REASSIGNMENT ON REMAND IS APPROPRIATE TO ENSURE A FULL AND FAIR EVIDENTIARY HEARING

When remanding a matter, an appellate court may direct reassignment where necessary to preserve both the appearance and reality of a fair and impartial proceeding, particularly where the record raises substantial concern that the issues may not receive a fresh and meaningful evaluation on remand.

Appellate courts have recognized that reassignment may be appropriate where necessary to preserve confidence in the fairness and neutrality of the proceedings. See *Liteky v. United States*; *Offutt v. United States*. Courts have additionally considered whether the record reflects a fixed view of the issues, a reliance on prior determinations, or a reluctance to reconsider prior rulings when determining whether reassignment is warranted. See *United States v. Robin*.

The record in this case demonstrates repeated reliance upon prior proceedings and prior rulings rather than a present evaluation of the issues raised by Appellant.

During the April 7, 2026 proceedings, the Court stated:

“Didn’t we just go through this less than a year ago, and it was appealed to the South Dakota Supreme Court... and they affirmed that... and now... you’re asking me to revisit the same issue?” (Appx. 70 and 71 Lines 23-8)

This statement supports that the Court viewed Appellant’s motion through the lens of prior proceedings and prior appellate rulings rather than as a request requiring independent evaluation of current circumstances. The Court further stated:

“And so based upon that, you want to have custody changed just like the motion that I denied about a year ago?” (Appx. 71 Lines 20-22)

This statement further supports that the Court approached the present motion as substantially resolved by prior determinations rather than as a matter requiring fresh evidentiary consideration.

The Court additionally relied upon the historical custody structure, stating:

“This has been going on since the child was very young.” (Appx. 74 Lines 11-12)

This statement further supports that the proceedings were framed through historical conflict and prior proceedings rather than through a present evaluation of the issues raised in Appellant’s motion.

The Court also curtailed further factual development during the proceedings, stating:

“I’ve heard enough. I’m going to deny that motion also.” (Appx. 74 Lines 3-4)

This statement supports that the Court terminated further presentation before the development of a meaningful evidentiary record.

The Court further made conclusions regarding the child’s best interests without the development of testimony or admitted evidence, stating:

“It sounds like he is acting in her best interest, so I don’t have an issue with it.” (Appx. 85 Lines 10-12)

This statement supports that the Court reached substantive conclusions regarding the child's welfare despite the absence of a properly developed evidentiary record. The Court additionally stated:

“the father is the sole custodian and he'll make the call appropriately.” (Appx. 84 Lines 22-23)

These statements support that the Court relied upon the existing custody structure and prior determinations rather than requiring the development of evidence regarding the child's present circumstances.

The Court further stated:

“I don't see anything... that indicates that she made up a story...” (Appx. 86-87 Lines 23-4)

This statement supports that the Court reached credibility and factual conclusions despite the absence of sworn testimony or a developed evidentiary record.

The Court additionally stated:

“you don't have anything that indicates that she misrepresented anything.” (Appx. 87 Lines 3-4)

This statement further supports that the Court rejected Appellant's allegations based upon the absence of evidence despite the lack of a fully developed evidentiary record.

Collectively, these statements demonstrate that the proceedings were shaped by reliance upon prior rulings, limitations on evidentiary development, and conclusions reached without the evidentiary process ordinarily required in custody matters.

Where a court has already demonstrated a fixed reliance on prior determinations and declined to permit meaningful development of the factual record, reassignment on remand may be

appropriate to ensure that the matter is evaluated upon current facts, current circumstances, and a properly developed evidentiary record.

Appellant respectfully submits that reassignment on remand is necessary to preserve both the appearance and reality of a full and fair evidentiary hearing.

Accordingly, Appellant respectfully requests that, in the event of remand, this Court direct that further proceedings be assigned to a different judge.

CONCLUSION AND RELIEF REQUESTED

This case did not involve the evidentiary process required for a custody determination affecting a minor child. No witnesses were sworn, no testimony was formally taken, no exhibits were admitted into evidence, and no meaningful factual record was developed. Despite the absence of an evidentiary foundation, the Circuit Court nevertheless reached conclusions regarding custody, medical decision-making, credibility, and the child's best interests.

The issues raised by Appellant were not merely attempts to relitigate prior proceedings. Appellant alleged worsening conditions, escalating exclusion from parental involvement, interference with communication regarding the child's medical care, and continuing concerns affecting the child's welfare arising after the prior orders and proceedings. Rather than independently evaluating those current concerns, the Court repeatedly relied upon prior rulings, prior proceedings, and the prior appellate affirmance while declining to meaningfully develop the factual record necessary for a present best-interest determination. Even when Appellant attempted to present additional information and identify inconsistencies between statements made during the proceedings and documents already before the Court, the evidentiary process was curtailed before a complete record could be developed. Custody determinations affecting a minor child must rest upon evidence, testimony, and a present evaluation of the child's best interests. Instead, the proceedings below resulted in conclusions based largely upon assumption, prior determinations, and an undeveloped record.

This matter involves substantial procedural deficiencies, including the absence of sworn testimony, admitted evidence, articulated findings, and a meaningful evidentiary hearing sufficient to permit proper review or support a custody determination under

South Dakota law.

Accordingly, Appellant respectfully requests that this Court:

1. Reverse the Circuit Court's April 9, 2026 Order in its entirety;
2. Reverse the denial of Appellant's Motion to Modify Custody and Parenting Time, as well as related motions, including those concerning contempt and enforcement;
3. Remand this matter for a full evidentiary hearing and further proceedings consistent with this Court's decision;
4. Direct that, upon remand, the matter be reassigned to a different judge to ensure a full and fair evidentiary proceeding;
5. Direct the appointment of a neutral custody evaluator to assess the child's present circumstances and best interests;
6. Order that the custody evaluator complete and submit a written report within sixty (60) to ninety (90) days of appointment;
7. Direct the Circuit Court to conduct a full evidentiary hearing within thirty (30) days following completion of the evaluator's report, at which both parties are afforded the opportunity to present sworn testimony, documentary evidence, and relevant witnesses; and
8. Grant such other and further relief as this Court deems just and proper.

Dated this 20th day of May, 2026.

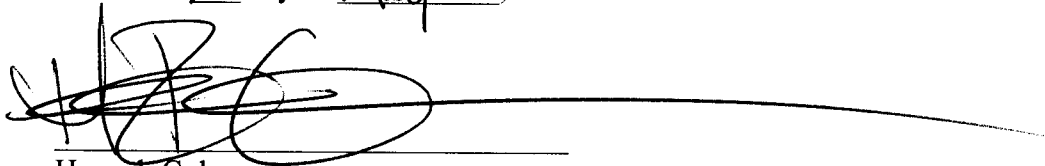


Hannah Cole, Pro Se Appellant
914 Main Ct S
Bloomer, WI 54724
(715) 210-7539
h.ruth.s2018@gmail.com

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66, I certify that this brief complies with the applicable type-volume limitation because it contains approximately 7,455 words, excluding the portions exempted under the rule.

Dated this 25th day of May, 2026.

A large, stylized handwritten signature in black ink, appearing to be 'Hannah Cole', written over a horizontal line.

Hannah Cole
Pro Se Appellant

STATE OF SOUTH DAKOTA
IN SUPREME COURT

JOSHUA ROSS,
Plaintiff and Appellee,

v. Supreme Court Case No. 31466

HANNAH COLE,
Defendant and Appellant.

CERTIFICATE OF SERVICE

I, Hannah Cole, certify that on this 20th day of May, 2026, I served a true and correct copy of the foregoing Appellant's Brief and Appendix upon:

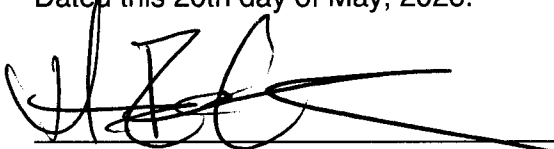
Joshua Daniel Ross
613 Weber Drive
Sturgis, SD 57785

by the following methods:

■ Upload and service through Our Family Wizard (OFW)

■ United States Mail, postage prepaid

Dated this 20th day of May, 2026.

A handwritten signature in black ink, appearing to read 'Hannah Cole', is written over a horizontal line.

Hannah Cole
Pro Se Appellant
914 Main Ct S
Bloomer, WI 54724
(715) 210-7539
h.ruth.s2018@gmail.com