

IN THE COURT OF APPEALS OF IOWA

No. 6-585 / 06-0288
Filed November 16, 2006

**IN RE THE MARRIAGE OF VICKI LEA STEINBECK
AND DAVID LEE STEINBECK**

**Upon the Petition of
VICKI LEA STEINBECK,**
Petitioner-Appellee,

**And Concerning
DAVID LEE STEINBECK,**
Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers,
Judge.

David Lee Steinbeck appeals the district court's order denying
modification of the decree. **AFFIRMED.**

John T. Flynn of Brubaker, Flynn & Darland, P.C., Davenport, for
appellant.

Catherine Alexander, Davenport, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

David Steinbeck petitioned to modify a dissolution decree. He sought to have the district court transfer physical care of his daughter, Jaime, from his ex-wife, Vicki Talbot, to him. Following an evidentiary hearing, the district court denied his petition. On appeal, Steinbeck challenges the district court's (1) refusal to modify physical care, (2) treatment of excess Social Security disability dependent benefits, and (3) refusal to award attorney fees.

I. Physical Care

The parties do not dispute that there was a substantial change of circumstances since the time of the decree, that was not contemplated when the decree was entered. *In re Marriage of Malloy*, 687 N.W.2d 110, 113 (Iowa Ct. App. 2004). The fighting issue is whether Steinbeck established that he could provide superior care. *Id.* On this question, the district court found that the parties offered "very different testimony." After making detailed credibility determinations, the court stated,

[T]he assertions made by David concerning Vicki's failings in providing for Jaime's everyday needs, including nutrition, cleanliness, activities, and education, are all credibly refuted by Vicki in the evidence she presents. The evidence does not support a finding that David can better provide for the care of Jaime than Vicki can, and does, provide for the child.

We have reviewed the record de novo. Iowa R. App. P. 6.4. The district court's comprehensive fact findings are supported by the record and, indeed, are taken almost verbatim from witness testimony.

We recognize that the question of whether Steinbeck could provide superior care was a close one. In this type of close case, the district court's

unique opportunity to observe the witnesses and assess demeanor becomes particularly important. See *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). The district court availed itself of this opportunity and, accordingly, its fact findings are entitled to deference. *Id.* The court's conclusion that Steinbeck did not satisfy one of the modification standards flowed directly from its considered fact findings. We affirm this conclusion.

II. Social Security Disability Benefits

Steinbeck was disabled. As a result, Jaime was entitled to Social Security disability dependent benefits. The district court ordered the payment of these benefits to Talbot, in lieu of child support. The court also determined that these benefits exceeded Steinbeck's child support obligation under the guidelines by seventy-nine dollars per month. Talbot agreed to save the excess for Jaime's benefit. On appeal, Steinbeck argues,

[T]he court should impose a constructive trust on the amount of these payments in excess of David's child support obligation to be set aside as David's contribution to Jaime's future college expenses, and David should be given the right to approve expenditure of these funds.

Excess benefits after proper expenditures for a child's current needs "must be conserved or invested on behalf of the child." *Jahnke v. Jahnke*, 526 N.W.2d 159, 162 (Iowa 1994) (citing 20 C.F.R. § 404.2045(a)). Talbot testified she opened a savings account for Jaime, which required both her signature and Jamie's signature for withdrawals. She stated she placed the excess benefits in this account. Given the absence of any evidence that Talbot was misusing Jaime's benefits, we conclude her placement of the funds in this savings account sufficiently ensured that they would be conserved for Jaime's benefit.

III. Attorney Fees

Steinbeck argues that the district court should have ordered Talbot to pay his trial attorney fees. Our review of this ruling is for an abuse of discretion. *Bryant v. Schuster*, 447 N.W.2d 566, 568 (Iowa Ct. App. 1989).

In his amended and substituted petition, Steinbeck specifically requested an order requiring each party to pay his or her own fees. The district court obliged. We discern no abuse of discretion in this ruling.

AFFIRMED.