

**IN THE COURT OF APPEALS OF IOWA**

No. 6-716 / 06-0104  
Filed October 11, 2006

**IN RE THE MARRIAGE OF DAWN ELAINE SWIPIES AND KENNETH  
HAROLD SWIPIES**

**Upon the Petition of  
DAWN ELAINE SWIPIES,**  
Petitioner-Appellee,

**And Concerning  
KENNETH HAROLD SWIPIES,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Plymouth County, Duane E.  
Hoffmeyer, Judge.

Kenneth Swipies appeals from the district court's denial of his request to  
quash a garnishment. **AFFIRMED.**

Kenneth Swipies, LaPine, Oregon, pro se.

Thomas J. Miller, Attorney General, and Jennifer Bennett, Assistant  
Attorney General, Sioux City, and Tamara Lorence, Assistant Attorney General,  
for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**PER CURIAM**

Kenneth Harold Swipies appeals following the district court's denial of his request for an order quashing a garnishment. We affirm.

**BACKGROUND FACTS**

The marriage of Kenneth and Dawn Elaine Swipies was dissolved in March of 1990. The parties had one child, Kendra, who was born in October of 1987. Custody of Kendra was placed with Dawn, and Kenneth was ordered to pay child support of \$275 a month.

Kenneth subsequently experienced health problems and was determined to be totally disabled by the Social Security Administration. In July of 1996 the district court addressed a modification of child support and determined Kenneth's child support should be set at an amount equal to the amount Kendra received from social security as a result of Kenneth's disability. In July of 1996 Kendra received \$158 a month. At the time of this order Kenneth was over \$10,000 delinquent in his child support obligation and his social security disability was being garnished in the amount of fifty dollars a month.

It appears that following this modification Kenneth's parental rights were terminated but Kendra continued to receive social security benefits as a result of Kenneth's disability.

In August of 2005, Kenneth filed a motion requesting quashing of the garnishment. His theory appears to be that certain of Kendra's social security payments should be credited to Kenneth's delinquent child support, and because these amounts allegedly exceed the amount Kenneth was delinquent in child support, his social security disability payments should no longer be garnished.

The district court held a hearing but the hearing was not reported. Following the hearing, the district court found that from November of 1995 through July of 1996, benefits paid to Kendra were not properly credited against Kenneth's child support obligation and the court gave Kenneth a credit for \$1,414.00. The court found the remaining balance due was \$5,270.10.

The district court denied Kenneth's claim that payments made by social security to Kendra in excess of Kenneth's child support obligation or after his parental rights were terminated could be credited to Kenneth's delinquency. The district court found that these benefits can only be applied to satisfy child support that accrued during the same time period the benefits were paid.

The State contends the district court correctly determined this issue and that the record is void of evidence to show Kenneth overpaid his support.

The absence of a transcript of the hearing gives us little to review. See *State v. Mudra*, 532 N.W.2d 765, 767 (Iowa 1995). That said, in reviewing the limited record we have we agree with the district court's decision. There is no basis to apply benefits paid to a child as the result of his or her parent's disability to delinquent child support. *Newman v. Newman*, 451 N.W.2d 843, 844 (Iowa 1990). In *Newman*, the supreme court determined that a custodial parent should not be required, on a theory of unjust enrichment, to pay restitution to a disabled noncustodial parent for social security dependent benefits paid for the disabled parent's child that exceeded the amount of court-ordered child support. *Id.*

**AFFIRMED.**