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fact is that neither what the parties thought the judge meant nor what the judge thought he or she meant, after time for appeal has passed, is of any relevance. . . .'" *Gutierrez v. Gutierrez*, 5 Neb. App. 205, 217, 557 N.W.2d 44, 52 (1996). What the decree, as it became final, means as a matter of law as determined from the four corners of the decree is what is relevant. *Id.* Because the decree left unresolved an issue that the court was required by statute to resolve, it cannot be a final order no matter how the district court characterized its actions.

CONCLUSION

Because the decree from which Amardip appealed does not incorporate a parenting plan as is required by § 43-2929, we conclude that the decree was not a final, appealable order and that we must dismiss the appeal for lack of jurisdiction.

APPEAL DISMISSED.

STATE OF NEBRASKA, APPELLEE, V.
STEVEN R. BLAIR, APPELLANT.
767 N.W.2d 143

Filed May 19, 2009. No. A-08-587.

1. **Attorneys at Law: Stipulations.** The unsupported assertions of attorneys during court proceedings do not establish the facts asserted unless the other appropriate parties stipulate to such facts.
2. **Courts: Arrests: Records.** Under Neb. Rev. Stat. § 29-3523(2)(c) (Reissue 2008), which requires that the notation of a person's arrest be removed from the record if the charges are later dismissed, the person arrested may file a petition seeking to enforce his or her right to have their record expunged.
3. **Courts: Arrests: Records: Proof.** A trial court may not grant a person's petition seeking to enforce his or her right to have a record expunged under Neb. Rev. Stat. § 29-3523(2)(c) (Reissue 2008) unless the petitioner proves that the charges against him or her have not been removed from the record.
4. **Judgments: Appeal and Error.** Where the record adequately demonstrates that the decision of a trial court is correct—although such correctness is based on a ground or reason different from that assigned by the trial court—an appellate court will affirm.

Appeal from the District Court for Douglas County: GREGORY M. SCHATZ, Judge. Affirmed.

Steven R. Blair, pro se.

Jon Bruning, Attorney General, and Nathan A. Liss for appellee.

IRWIN, CARLSON, and MOORE, Judges.

CARLSON, Judge.

INTRODUCTION

Steven R. Blair appeals from an order of the district court for Douglas County denying his motions to expunge certain information from the public record and to return his bond money. For the reasons set forth below, we affirm.

BACKGROUND

In 1998, Blair was convicted of kidnapping, use of a deadly weapon to commit a felony, and terroristic threats. In 2003, Blair moved for postconviction relief. The district court granted the motion, setting aside Blair's convictions and sentences and ordering a new trial. The State appealed to this court.

Before the State's appeal was heard, Blair filed another motion—a motion for status of the case on jurisdiction. In that motion, Blair requested that the district court release him on bond and appoint counsel for the appeal. While the motion was under advisement in the district court, we ordered the district court to rule on Blair's request for counsel. The district court granted Blair's request for counsel but denied the remainder of Blair's motion because it lacked jurisdiction.

Shortly thereafter, we dismissed the State's appeal and concluded that the court lacked jurisdiction due to Blair's motion to alter or amend the judgment. See *State v. Blair*, 14 Neb. App. 190, 707 N.W.2d 8 (2005). After the State's appeal was dismissed, a new trial date was set. Before trial, the county attorney moved to dismiss the case and the district court entered an order of dismissal.

After the case was dismissed, Blair filed separate motions for expungement and return of his bond money. In his motion for expungement, Blair asked the court for an order expunging from all official records, other than those nonpublic records retained by the Omaha police, his arrest, indictment, information, trial,

and dismissal. In his motion for the return of his bond money, Blair moved for an order requiring the county court to return his full bond and asked that a 10-percent administrative fee be waived.

A hearing was held on May 6, 2008. In an order filed May 14, the district court denied both motions. Blair appeals.

ASSIGNMENT OF ERROR

Blair argues that the district court erred in determining that it was without authority to rule on his motions for expungement of the public record and a return of his bond money.

ANALYSIS

Return of Bond Money.

Regarding the bond money, Blair claims that the district court had discretion to remit the full amount of his bond. Blair claims he is entitled to a return of a 10-percent administrative fee, because he did not breach any conditions of release. The transcript shows that in February 2006, the trial court set Blair's bond at $75,000 and ordered Blair to pay 10 percent. At the hearing, Blair's counsel stated that Blair received 90 percent of his bond when his case was dismissed, but that a 10-percent administrative fee was withheld. Blair's counsel argued that Blair was requesting that the administrative fee be waived on the bases that his case was dismissed and his previous convictions were overturned.

The State argues that Blair is not entitled to recovery, because he failed to present any evidence supporting his motion for the return of his bond money. Specifically, the State contends that Blair's counsel's comments at the hearing are not evidence and that there is no evidence which shows that Blair put up his bond or that the entire bond was not returned to Blair. We agree.

[1] The unsupported assertions of attorneys during court proceedings do not establish the facts asserted unless the other appropriate parties stipulate to such facts. *Schroeder v. Barnes*, 5 Neb. App. 811, 565 N.W.2d 749 (1997). We find that because the State failed to stipulate that Blair posted his bond and that it had not been returned and because Blair failed to present

such evidence, the trial court did not err in overruling Blair's motion to return his bond.

Expungement of Blair's Record.

[2] As for the expungement issue, Blair claims he should have his record expunged because he falls within Neb. Rev. Stat. § 29-3523(2)(c) (Reissue 2008), which states:

> In the case of an arrest for which charges are filed, but dismissed by the court on motion of the prosecuting attorney or as a result of a hearing not the subject of a pending appeal, the arrest shall not be part of the public record after three years from the date of arrest.

The State claims that this court is unable to address Blair's argument because Blair attempted to invoke a procedure to expunge his record which is not authorized by § 29-3523(2)(c). The State notes that § 29-3523(2)(c) appears to apply automatically and does not authorize a person to file a petition to expunge. We disagree. The language of § 29-3523(2)(c) appears to be self-executing—specifically, if the conditions fit, a notation of dismissal shall be made on the defendant's record. And therefore, even though Blair did not need to file a petition to expunge, the fact that he did so does not mean that Blair's claim cannot be addressed. Therefore, the trial court erred in finding that it was without authority to grant Blair's motion to expunge.

[3] Although this is true, we conclude, after reviewing the record, that the trial court reached the correct conclusion for the wrong reasons. At the hearing on Blair's motion, Blair's attorney asked the court to issue an order for the Omaha Police Department to erase Blair's charges from his criminal record. Blair did not present evidence showing that the charges were still on his record and that expungement was required.

[4] Given this lack of evidence, we cannot say that the trial court erred in denying Blair's motion to expunge the record. Where the record adequately demonstrates that the decision of a trial court is correct—although such correctness is based on a ground or reason different from that assigned by the trial court—an appellate court will affirm. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

CONCLUSION

After reviewing the record, we conclude that the district court did not err in denying Blair's motions for expungement of the public record and return of his bond money, given that Blair failed to present sufficient evidence to support his claims. Therefore, the district court's order is affirmed in its entirety.

AFFIRMED.

PAMELA S. WILKINS ET AL., APPELLEES, V. RICHARD F. BERGSTROM, M.D., APPELLANT.

767 N.W.2d 136

Filed May 19, 2009. No. A-08-801.

1. **Jury Instructions: Judgments: Appeal and Error.** Whether a jury instruction given by a trial court is correct is a question of law. When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusion reached by the trial court.
2. **Motions for New Trial: Appeal and Error.** Decisions regarding motions for new trial are directed to the discretion of the trial court, and will be upheld in the absence of an abuse of discretion.
3. **Trial: Waiver: Appeal and Error.** Failure to make a timely objection waives the right to assert prejudicial error on appeal.
4. **Jury Instructions: Appeal and Error.** The failure to object to instructions after they have been submitted to counsel for review or to offer more specific instructions if counsel feels the court-tendered instructions are not sufficiently specific will preclude raising an objection on appeal, unless there is a plain error indicative of a probable miscarriage of justice.
5. **Jury Instructions: Proof: Appeal and Error.** To establish reversible error from a court's failure to give a requested jury instruction, an appellant has the burden to show that (1) the tendered instruction is a correct statement of the law, (2) the tendered instruction was warranted by the evidence, and (3) the appellant was prejudiced by the court's failure to give the requested instruction.
6. **Jury Instructions: Appeal and Error.** In reviewing a claim of prejudice from jury instructions given or refused, an appellate court must read the instructions together, and if, taken as a whole, they correctly state the law, are not misleading, and adequately cover the issues supported by the pleadings and evidence, there is no prejudicial error.
7. **Jury Instructions.** The trial court is not required to give a proffered instruction which unduly emphasizes a part of the evidence in the case.