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the fact that Cornelius is a homeless and destitute child at risk of harm because currently there is no parent or legal guardian providing care for him. Cornelius is thus properly subject to the jurisdiction of the juvenile court under § 43-247(3)(a).

## CONCLUSION

We conclude that because the relinquishment was not properly accepted, Laura's parental rights have not been terminated and the district court erred in dismissing her from the proceedings. We vacate that portion of the adjudication order, but affirm the order in all other respects and remand the cause to the juvenile court for further proceedings consistent with this opinion.

AFFIRMED AS MODIFIED, AND CAUSE REMANDED FOR FURTHER PROCEEDINGS.

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# ARLEEN M. WEBER, APPELLANT AND CROSS-APPELLEE, V. GAS 'N SHOP, INC., AND EMPLOYERS MUTUAL COMPANIES, APPELLEES AND CROSS-APPELLANTS.

786 N.W.2d 671

Filed July 23, 2010. No. S-09-1300.

1. **Judgments: Statutes: Appeal and Error.** Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determination made by the trial court.
2. **Workers' Compensation: Garnishment.** A garnishment action is an appropriate proceeding to enforce an award of the Workers' Compensation Court.
3. **Garnishment: Notice.** In a garnishment proceeding, the issue is whether the garnishee is indebted to the garnishor or had property or credits of the garnishor in its possession or under its control at the time it was served with notice of the garnishment.

Appeal from the District Court for Douglas County: MARLON A. POLK, Judge. Affirmed.

Jerold V. Fennell and Michael J. Dyer, of Dyer Law, P.C., L.L.O., for appellant.

Tyler P. McLeod and Jeffrey J. Blumel, of Abrahams, Kaslow & Cassman, L.L.P., for appellees.

HEAVICAN, C.J., WRIGHT, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

## I. NATURE OF CASE

This case involves a garnishment proceeding to collect money allegedly due pursuant to a workers' compensation award. The case was previously before this court in *Weber v. Gas 'N Shop*, 278 Neb. 49, 767 N.W.2d 746 (2009) (*Weber I*). In 2008, appellant, Arleen M. Weber, filed her 1993 workers' compensation award with the district court for Douglas County and commenced garnishment proceedings. She alleged that $184,875 was owed by appellees, Employers Mutual Companies (EMC) and Gas 'N Shop, Inc., representing temporary total disability payments since 1994. The district court granted appellees' motion to dismiss the garnishment proceedings, and Weber appealed. This dismissal was reversed in *Weber I*, in which we concluded, contrary to the ruling in district court, that Weber's workers' compensation award was not a conditional judgment and was not dormant. This court remanded the cause to the district court with directions to consider appellees' remaining affirmative defenses. On remand, in an order filed December 2, 2009, the district court dismissed Weber's action as being barred by the statute of limitations found at Neb. Rev. Stat. § 48-137 (Reissue 2008). Weber appeals. Appellees cross-appeal. For reasons others than those articulated by the district court, we affirm the dismissal of Weber's action.

## II. STATEMENT OF FACTS

The underlying facts relevant to the current appeal were previously reported in *Weber I* and are as follows: In March 1991, Weber filed a workers' compensation action alleging that she sustained a compensable injury to her right knee while employed at Gas 'N Shop. On September 22, 1993, the Workers' Compensation Court entered an award (the 1993 award), which was affirmed by a review panel on February 25, 1994. The court awarded Weber benefits of $255 per week for temporary total disability from September 1, 1992, through September 1, 1993, "and thereafter and in addition thereto a

like sum per week for so long in the future as [Weber] remains temporarily totally disabled." The award provided that "[w]hen [Weber] reaches maximum medical improvement, she shall be entitled to the statutory amounts for any residual disability." The award further stated that "[i]f, after [Weber] reaches maximum medical improvement, the parties are unable to agree on the extent, if any, of permanent disability or on [Weber's] entitlement to vocational rehabilitation services, either party may file a further petition herein for the determination of such issues."

On May 16, 2008, Weber filed the compensation award with the district court for Douglas County and commenced garnishment proceedings on June 10. The garnishment proceedings were brought against UMB Bank. Weber alleged that UMB Bank held funds belonging to EMC, which was the workers' compensation insurer for Gas 'N Shop at the time of Weber's injury. In the garnishment proceeding, Weber claimed that she was owed $184,875, representing temporary total disability since 1994.

In response to the garnishment complaint, appellees filed a motion to dismiss. In their motion, they asserted seven affirmative defenses: (1) The compensation award was a conditional judgment and wholly void; (2) the compensation award was dormant; (3) appellees had complied with all terms of the award; (4) Weber's claim was barred by the statute of limitations; (5) Weber's claim was barred by res judicata and issue preclusion; (6) Weber's claim was barred by estoppel, laches, acquiescence, inexcusable neglect, and unclean hands; and (7) Weber's claim violated appellees' rights to due process.

An evidentiary hearing was held on the motion. Evidence was presented to establish that EMC received from Weber's treating physician a letter dated March 9, 1994, stating that Weber had reached maximum medical improvement as of January 18, 1994. The physician gave Weber a 10-percent permanent disability rating to her right lower extremity. Upon receipt of this information, EMC sent Weber's attorney a draft in the amount of $18,396.47, representing 72⅐ weeks of temporary total disability benefits from September 1, 1992, through January 18, 1994. EMC also sent Weber's attorney a draft in the amount of

$2,550, representing 10 weeks of permanent partial disability benefits at the rate of $255 per week for an additional 11½ weeks based upon the 10-percent disability rating.

EMC received from Weber's treating physician a second report dated March 31, 1995. The physician revised Weber's disability rating to 20 percent based on ongoing problems with her knee. Upon receipt of this report, EMC sent Weber's attorney a second letter detailing the payments it would make based on this report. Appellees' evidence showed that in total, EMC paid Weber $18,396.47 in temporary total disability benefits for the period of September 1, 1992, through January 18, 1994; $5,500.61 in permanent partial disability benefits for the period of January 19 through June 18, 1994; $5,100 in temporary total disability benefits for the period of July 15 through December 1, 1994; and $5,464.40 in permanent partial disability benefits for the period of December 2, 1994, through April 30, 1995. EMC also paid various medical and hospital expenses incurred by Weber between 1993 and 2008.

Weber did not dispute the amount paid to her until January 2008, at which time Weber's attorney advised EMC that Weber was claiming additional disability benefits, penalties, interest and attorney fees pursuant to the 1993 award.

After the hearing, the district court entered an order granting appellees' motion to dismiss the garnishment proceeding. The district court based its decision primarily on the conclusion that in April 2000, the award became dormant pursuant to Neb. Rev. Stat. § 25-1515 (Reissue 2008).

On appeal, in *Weber I*, this court reversed the district court's order and remanded the cause with directions. We initially concluded that the award was sufficiently definite to be enforceable and was therefore not a conditional judgment. We further concluded that the award was not dormant. In *Weber I*, we did not address the remaining affirmative defenses raised by appellees because the district court had not ruled on these defenses. Instead, we reversed, and remanded to the district court to rule on the remaining defenses on the existing record unless the parties agreed to expand the record.

On remand, the court held a hearing on August 27, 2009. In an order filed December 2, the district court granted appellees'

motion to dismiss. The December 2 order is the subject of the current appeal. In its order, the district court concluded that appellees should have sought a modification of the 1993 award under Neb. Rev. Stat. § 48-141 (Supp. 2009) before converting from temporary to permanent benefits. The court also made numerous findings, including that EMC had paid the amounts recited earlier in this opinion pursuant to the 1993 award. Notwithstanding these findings, the district court concluded that the garnishment proceedings were barred by the 2-year statute of limitations found at § 48-137 and granted the motion to dismiss on this basis.

In connection with its statute of limitations analysis, the court reasoned that between July 9, 1997, and December 17, 1999, a period of 2 years 5 months, appellees did not make any payments for medical services on Weber's behalf. On December 17, appellees resumed making payments for medical services on Weber's behalf and continued to make such payments through August 3, 2006. The court concluded "from the applicable statute and the cases cited" in its order, that Weber "would have 2 years from the date of the last payment she received from [appellees]," which date "would approximately have been July 9, 1999," and that "[a]ny claim filed after July 9 . . . would be barred." Weber appeals, and appellees cross-appeal.

## III. ASSIGNMENTS OF ERROR

### 1. Assignment of Error on Appeal

Weber claims that the district court erred as a matter of law when it concluded that § 48-137 barred a claim made more than 2 years after the last payment of compensation where the compensation was paid pursuant to an award from the Workers' Compensation Court.

### 2. Assignments of Error on Cross-Appeal

Appellees claim that the district court erred (1) in ruling that appellees were required to seek modification of the award pursuant to § 48-141 before converting from temporary to permanent disability benefits and (2) in failing to grant appellees'

motion to dismiss on the ground that they had complied with all of the terms of the 1993 award.

## IV. STANDARD OF REVIEW

[1] Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determination made by the trial court. *City of Falls City v. Nebraska Mun. Power Pool*, 279 Neb. 238, 777 N.W.2d 327 (2010).

## V. ANALYSIS

### 1. Appeal

#### (a) The District Court Erred When It Concluded That Weber's Claim Asserted in the Garnishment Proceeding Was Barred by the 2-Year Limitation in § 48-137

Weber claims that the district court erred as a matter of law when it concluded that her claim for further workers' compensation benefits and execution of garnishment was barred by the 2-year limitation in § 48-137. We agree with Weber that the district court erred in this conclusion and erred in dismissing her garnishment proceeding on this basis.

Section 48-137 provides as follows:

> In case of personal injury, all claims for compensation shall be forever barred unless, within two years after the accident, the parties shall have agreed upon the compensation payable under the Nebraska Workers' Compensation Act, or unless, within two years after the accident, one of the parties shall have filed a petition as provided in section 48-173. In case of death, all claims for compensation shall be forever barred unless, within two years after the death, the parties shall have agreed upon the compensation under the Nebraska Workers' Compensation Act, or unless, within two years after the death, one of the parties shall have filed a petition as provided in section 48-173. When payments of compensation have been made in any case, such limitation shall not take effect until the expiration of two years from the time of the making of the last

> payment. In the event of legal disability of an injured employee or his or her dependent such limitation shall not take effect until the expiration of two years from the time of removal of such legal disability.

The district court reasoned that under § 48-137, Weber had 2 years from the last payment made by appellees on July 3, 1997, to assert a claim for the compensation she sought in this garnishment proceeding. The district court's reasoning is contrary to our decision in *Foote v. O'Neill Packing*, 262 Neb. 467, 632 N.W.2d 313 (2001). In *Foote*, we considered a claim for medical expenses asserted greater than 2 years after the last payment made pursuant to an award previously entered on a worker's petition. We concluded that given the statutory language and the continuing jurisdiction of the compensation court with respect to its order awarding compensation, the 2-year limitation in § 48-137 was not applicable. Although the 2-year limitation is applicable in the case of voluntary payments made in the absence of a petition, we concluded that the 2-year limitation was not a bar where the worker had previously filed a timely petition.

We agree with Weber that the district court erred when it concluded that Weber's garnishment proceeding should be dismissed based on a purported failure to seek further compensation within 2 years after appellees made the last payment. However, notwithstanding this error in reasoning, because we conclude that dismissal was warranted on another basis, this error does not result in a reversal.

### 2. Cross-Appeal

#### (a) The District Court Erred in Ruling That EMC and Gas 'N Shop Were Required to Seek a Modification Under § 48-141

On cross-appeal, appellees claim that the district court erred when it ruled that appellees were required under § 48-141 to obtain an order modifying the 1993 award prior to converting payment of benefits from temporary total disability to permanent partial disability. In response, Weber asserts that the district court was correct and that, in the absence of a modification, she is entitled to a continuation of temporary

benefits since 1993 which she sought by way of this garnishment proceeding filed in 2008 in the amount of $184,875. We conclude that given the language of the 1993 award, appellees' payment of permanent partial disability benefits upon receipt of the 1994 letter from Weber's physician—stating Weber's maximum medical improvement and disability rating—was a performance of the obligations imposed by the 1993 award rather than a modification of the 1993 award, and that therefore, no modification proceeding under § 48-141 was required. We agree with appellees that the district court's ruling to the contrary was error.

Section 48-141, which is relevant to our resolution of appellees' first assignment of error, provides as follows:

> All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employee or his or her dependents by lump-sum payments pursuant to section 48-139 shall be final and not subject to readjustment if the lump-sum settlement is in conformity with the Nebraska Workers' Compensation Act, unless the settlement is procured by fraud, but the amount of any agreement or award payable periodically may be modified as follows: (1) At any time by agreement of the parties with the approval of the Nebraska Workers' Compensation Court; or (2) if the parties cannot agree, then at any time after six months from the date of the agreement or award, an application may be made by either party on the ground of increase or decrease of incapacity due solely to the injury or that the condition of a dependent has changed as to age or marriage or by reason of the death of the dependent. In such case, the same procedure shall be followed as in sections 48-173 to 48-185 in case of disputed claim for compensation.

This case involves an award payable periodically. Weber asserts, and the district court concluded, that because converting from a temporary amount to a permanent amount was a change in "the amount of any . . . award" under the language of § 48-141, a modification was necessary under that statute before appellees could properly change periodic payment

amounts. Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent, correct conclusion irrespective of the determination made by the trial court. *City of Falls City v. Nebraska Mun. Power Pool*, 279 Neb. 238, 777 N.W.2d 327 (2010). As a matter of law, we conclude that the amount of the award as understood under § 48-141 did not change and that no modification proceeding was necessary. We note further that both Weber and the district court relied on certain cases referred to later in this opinion; however, we conclude that the cases relied on are factually distinguishable and that reliance thereon was misplaced.

The district court and Weber characterize the change in benefits in this case from temporary total to permanent partial as an improper unilateral cessation of temporary total benefits. To the contrary, the change in disability payments was not a unilateral act by appellees, but instead was both required and outlined under the 1993 award. The 1993 award provided in relevant part:

> IX.
>
> . . . .
>
> IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:
>
> 1. [Weber] have and recover of [Gas 'N Shop] and [EMC] the sum of $255.00 per week for temporary total disability from September 1, 1992, through September 1, 1993, and thereafter and in addition thereto a like sum per week for so long in the future as [Weber] remains temporarily totally disabled as a result of said accident and injury. When [Weber] reaches maximum medical improvement, she shall be entitled to the statutory amounts for any residual disability.
>
> 2. [Gas 'N Shop] and [EMC] pay the medical and hospital reimbursement sums set forth in Paragraph V above.
>
> 3. A further hearing may be had herein as set forth in Paragraph VIII above.
>
> 4. The amended petition of [Weber] as against the defendant Milwaukee Insurance Company be and is hereby dismissed.

Paragraph VIII, to which reference is made in paragraph IX (3), provided that "[i]f, after [Weber] reaches maximum medical improvement, the parties are unable to agree on the extent, if any, of permanent disability or on [Weber's] entitlement to vocational rehabilitation services, either party may file a further petition herein for the determination of such issues."

By its terms, the 1993 award directed appellees to pay temporary total disability until such time as Weber reached maximum medical improvement and to thereafter pay "statutory amounts" for "residual disability." "Residual disability" undisputedly refers herein to permanent partial disability, and the right knee injury involves a scheduled member. The award provided a roadmap, and upon receipt of the disability rating supplied by Weber's physician, the dollar amounts could be objectively determined by reference to the workers' compensation statute which was incorporated by reference. The award was sufficiently definite, as we concluded in *Weber I*.

Taken as a whole, the award directed the dollar amounts of temporary total disability to be paid, and upon maximum medical improvement and receipt of a permanent disability rating, appellees were directed to apply the statutes to determine the dollar amounts to be paid for the right knee as permanent partial benefits thereafter. Because Weber supplied the maximum medical improvement information and the permanent disability rating, and given that the right knee injury is a scheduled member injury, appellees had only to do the math, which they did, and pay the resultant permanent partial disability amounts as directed in the award. No disagreement was occasioned or further petition filed when appellees converted from temporary total to permanent partial benefits in 1994, as they were directed to do in the 1993 award. This conversion was not a modification of an "amount of any award" under § 48-141, but, to the contrary, was in compliance and in obedience to the amounts inherent in the 1993 award. Because no modification of the 1993 award was implicated when appellees converted from paying temporary total to permanent partial disability, appellees were not required to seek a modification under § 48-141.

Our conclusion that, under the terms of the 1993 award, no modification proceeding was necessary under § 48-141 is consistent with *Davis v. Crete Carrier Corp.*, 274 Neb. 362, 740 N.W.2d 598 (2007). In *Davis*, the rehearing award stated that when the employee's

> "total disability ceases, he shall be entitled to the statutory amounts of compensation for any residual permanent partial disability due to this accident and injury" [and that when the employee's] "total disability ceases if thereafter the parties cannot agree on the extent of [employee's] disability, if any, then a further hearing may be had herein on the application of either party."

274 Neb. at 372, 740 N.W.2d at 606. Later, the parties in *Davis* presented a stipulation which was ordered under which the employer paid the employee's temporary total benefits while the employee underwent vocational rehabilitation. Because the employee's physician later stated that the employee had reached maximum medical improvement and the employee had completed vocational rehabilitation, the employer ceased paying temporary total disability and paid permanent partial disability for the remainder of the statutory timeframe. We concluded upon these facts that no modification was necessary to terminate the employee's temporary total benefits and to begin payment of his permanent partial disability benefits.

In reaching our conclusion in *Davis*, we distinguished *Starks v. Cornhusker Packing Co.*, 254 Neb. 30, 573 N.W.2d 757 (1998), and *Hagelstein v. Swift-Eckrich*, 261 Neb. 305, 622 N.W.2d 663 (2001). In the present case, Weber and the district court relied on *Starks* and *Hagelstein*. We again distinguish *Starks* and *Hagelstein*. Both *Starks* and *Hagelstein* involved the unilateral termination of benefits by an employer, without court direction and without first seeking a modification. We disapproved of the practice. In *Davis*, we noted that, unlike *Starks* and *Hagelstein*, the compensation court in *Davis*, as in the present case, had directed the cessation of temporary benefits and conversion to permanent benefits upon the happening of an identified event, and further provided that a dissatisfied party could seek further clarification from the compensation court. The cessation of temporary benefits herein, as in *Davis*,

and the further payment of permanent benefits were done with compensation court approval pursuant to existing awards and orders. Reliance on *Starks* and *Hagelstein* by Weber and the district court was misplaced.

Because appellees were following the 1993 award when converting from temporary total to permanent partial benefits, there was no change in the amount of the award under § 48-141. Appellees were not required to seek a modification of that award. Had Weber objected to such conversion, under paragraph VIII of the 1993 award, she was entitled to—but failed to—dispute that conversion by filing a "further petition" in the Workers' Compensation Court. We agree with appellees that they were not obliged to seek a purported modification under § 48-141 and that the district court erred when it ruled to the contrary.

### (b) The District Court Erred When It Failed to Dismiss on the Ground That Appellees Had Complied With All Terms of the Award

On cross-appeal, appellees claim that the district court erred when it failed to grant appellees' motion to dismiss the garnishment proceeding on the ground appellees had complied with all terms of the 1993 award and that therefore, UMB Bank did not hold funds belonging to EMC to which Weber was entitled. We find merit to this assignment of error and conclude that, for reasons other than those given by the district court, Weber's garnishment proceeding should be dismissed on this basis.

[2,3] We have held that a garnishment action is an appropriate proceeding to enforce an award of the Workers' Compensation Court. See *ITT Hartford v. Rodriguez*, 249 Neb. 445, 543 N.W.2d 740 (1996). In a garnishment proceeding, the issue is whether the garnishee is indebted to the garnishor or had property or credits of the garnishor in its possession or under its control at the time it was served with notice of the garnishment. See Neb. Rev. Stat. § 25-1030.02 (Reissue 2008).

In *Weber I*, we reversed, and remanded for further proceedings and directed the district court to consider appellees' remaining defenses on the existing record unless the parties

agreed to reopen and expand the record. Upon remand, the record was not expanded and the district court in its order filed on December 2, 2009, now on appeal, made findings on the existing record.

In its findings, the district court relied on the affidavit of a senior claims representative of EMC detailing the disability amounts EMC had paid to Weber. The district court found that EMC had paid temporary total disability benefits followed by permanent partial disability benefits for the time periods set forth earlier in this opinion and that the permanent partial disability amount was based on the impairment rating supplied by Weber's physician. Notwithstanding its factual finding that EMC had paid the amounts directed in the 1993 award, the district court concluded that EMC was required to seek a modification of the award under § 48-141 prior to converting benefits from temporary total disability to permanent partial disability, and in view of this erroneous conclusion, it could not find that EMC had complied with the 1993 award. As discussed earlier in this opinion, no modification of the award was required in this case before EMC ceased paying temporary total disability and began paying permanent partial disability, and the district court therefore erred when it failed to find merit to the defense that EMC had complied with the terms of the 1993 award.

Because the factual findings of the district court indicate that EMC has in fact complied with the 1993 award, nothing is owed to Weber by EMC and UMB Bank does not hold funds of EMC to which Weber is entitled. As urged in appellees' cross-appeal, the district court erred when it failed to grant appellees' motion to dismiss based on the ground that appellees had complied with the terms of the award.

## VI. CONCLUSION

As asserted in Weber's appeal, the district court erred when it concluded that her claim asserted in this garnishment proceeding was barred by the 2-year limitation in § 48-137. As asserted in appellees' cross-appeal, given the language of the 1993 award, the district court erred when it concluded that appellees were required by § 48-141 to seek a modification

before converting disability benefit payments from temporary total disability to permanent partial disability. As asserted in appellees' cross-appeal, the district court erred when it failed to grant appellees' motion to dismiss on the ground that appellees had complied with all the terms of the 1993 award. Although our reasoning differs from that of the district court, we affirm its order dismissing Weber's summons and order of garnishment and interrogatories with prejudice.

AFFIRMED.

CONNOLLY, J., not participating.