judgment if he chose to do so[28] and that his willingness (or unwillingness) to do so could be seen as relevant to many of the factors that the Board of Parole is instructed to take into account when making a determination regarding a committed offender's release on parole.[29] We also note that although this opinion addresses the general applicability of § 81-2032, we make no comment on the extent to which the exempt status of Hobbs' retirement funds might be affected by any transformation in their character, such as through spending or investment.[30] And, as suggested above, nothing in this opinion should be construed to comment on whether the Legislature, if it chose to do so, could amend the scope of § 81-2032.

CONCLUSION

The district court correctly concluded that § 81-2032 foreclosed the relief J.M. sought in this proceeding. The court's judgment is affirmed.

AFFIRMED.

WRIGHT, J., not participating.

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[28] See *In re Interest of Battiato, supra* note 11.

[29] See Neb. Rev. Stat. § 83-1,114 (Reissue 2008).

[30] See, e.g., *Porter, supra* note 11; *Trotter v. Tennessee*, 290 U.S. 354, 54 S. Ct. 138, 78 L. Ed. 358 (1933); *In re Smith*, 242 B.R. 427 (E.D. Tenn. 1999); *E.W., supra* note 21; *Younger, supra* note 21.

STATE OF NEBRASKA ON BEHALF OF VANESSA I. MARTINEZ MAYORGA, APPELLANT, V. WILBERTH MARTINEZ-IBARRA, DEFENDANT AND THIRD-PARTY PLAINTIFF, AND PATRICIA R. MAYORGA, THIRD-PARTY DEFENDANT, APPELLEES.

797 N.W.2d 222

Filed May 13, 2011. No. S-10-750.

1. **Child Support: Child Custody: Appeal and Error.** As it does with child support and child custody determinations, the Nebraska Supreme Court reviews the award of cash medical support de novo on the record, with the decision of the trial court affirmed in the absence of an abuse of discretion.

2. **Judgments: Appeal and Error.** When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusions reached by the trial court.
3. **Statutes.** Statutory interpretation is a question of law.

Appeal from the District Court for Douglas County: GARY B. RANDALL, Judge. Reversed and remanded.

Jessica J. Rasmussen and Julie Fowler, of Child Support Enforcement Office, for appellant.

No appearance for appellees.

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

HEAVICAN, C.J.

INTRODUCTION

Wilberth Martinez-Ibarra was found to be the biological father of a minor child born to Patricia R. Mayorga in 2007. Martinez-Ibarra and Mayorga entered into a parenting plan, and Martinez-Ibarra was ordered to pay child support and cash medical support. The State appeals from the order of the district court regarding the amount of cash medical support awarded. We reverse the decision of the district court and remand the cause for reconsideration of child support and cash medical support.

FACTUAL BACKGROUND

On January 26, 2009, the State filed a paternity and support action against Martinez-Ibarra. That complaint asked for a finding that Martinez-Ibarra was the biological father of the minor child, born in 2007, and requested that Martinez-Ibarra be ordered to pay child support and provide medical support. The State filed the petition because the minor child was receiving services under title IV-D of the federal Social Security Act.

Martinez-Ibarra filed an answer and cross-complaint against Mayorga. In that complaint, Martinez-Ibarra requested joint custody. Mayorga then filed her own cross-complaint against Martinez-Ibarra for paternity and custody.

At trial held June 24, 2010, the parties stipulated to a parenting plan which granted Mayorga sole physical custody. Both child support and health insurance were at issue. Because neither party was employed full time, no health insurance was available for the minor child. The State asked that Martinez-Ibarra be ordered to pay $472.97 per month in child support, and an additional $77 per month as a cash medical support payment. The district court ordered child support in the amount of $472.97 and, after granting a credit to Martinez-Ibarra for $480, ordered cash medical support of $37 per month. Because the State provides title IV-D services, it has a right, by either subrogation or assignment of rights, to certain support payments awarded to Mayorga.[1]

The State appeals. Neither Martinez-Ibarra nor Mayorga have appeared on appeal.

ASSIGNMENTS OF ERROR

The State assigns that the district court erred in giving Martinez-Ibarra a $480 credit when calculating the amount of cash medical support to be ordered or, in the alternative, erred by not reducing the deduction for cash medical support when calculating the child support order.

STANDARD OF REVIEW

[1] As this court does with child support and child custody determinations, we review the award of cash medical support de novo on the record, with the decision of the trial court affirmed in the absence of an abuse of discretion.[2]

[2,3] When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusions reached by the trial court.[3] Statutory interpretation is a question of law.[4]

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[1] See Neb. Rev. Stat. § 43-512.07 (Cum. Supp. 2010).

[2] See, e.g., *Kamal v. Imroz*, 277 Neb. 116, 759 N.W.2d 914 (2009); *Gangwish v. Gangwish*, 267 Neb. 901, 678 N.W.2d 503 (2004).

[3] *State ex rel. Amanda M. v. Justin T.*, 279 Neb. 273, 777 N.W.2d 565 (2010).

[4] *Id.*

ANALYSIS

Error in Giving Credit.

In its first assignment of error, the State argues that the district court erred when it credited Martinez-Ibarra $480 when calculating the amount of cash medical support due.

Cash medical support payments are authorized by Neb. Rev. Stat. § 42-369 (Cum. Supp. 2010). In particular, § 42-369(2)(a) states that health insurance, where available, should be provided by a minor child's parents. Section 42-369(2)(a) further notes that the availability of health insurance is dependent upon its accessibility, in that the health insurance must provide coverage in the area in which the minor child resides, and notes that it must be available at a reasonable cost. The statute then provides:

> If health care coverage is not available or is inaccessible and one or more of the parties are receiving Title IV-D services, then cash medical support shall be ordered. Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the party responsible for providing medical support does not exceed three percent of his or her gross income. In applying the three-percent standard, the cost is the cost of adding the children to existing health care coverage or the difference between self-only and family health care coverage.[5]

Health care coverage is defined to include private health insurance, but not "public medical assistance programs."[6] And cash medical support is defined as "an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise or for other medical costs not covered by insurance."[7]

Also relevant are the Nebraska Child Support Guidelines. Neb. Ct. R. § 4-215 (rev. 2009) provides as follows:

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[5] § 42-369(2)(a).

[6] Neb. Rev. Stat. § 44-3,144(5) (Reissue 2010). See § 42-369(2)(b)(i).

[7] § 42-369(2)(b)(ii).

The child support order shall address how the parents will provide for the child(ren)'s health care needs through health insurance as well as the nonreimbursed reasonable and necessary child(ren)'s health care costs that are not included in table 1 that are provided for in § 4-215(B).

(A) Health Insurance. The increased cost to the parent for health insurance for the child(ren) of the parent shall be prorated between the parents. When worksheet 1 is used, it shall be added to the monthly support from line 7, then prorated between the parents to arrive at each party's share of monthly support on line 10 of worksheet 1. The parent requesting an adjustment for health insurance premiums must submit proof of the cost for health insurance coverage of the child(ren). The parent paying the premium receives a credit against his or her share of the monthly support.

(B) Health Care. Children's health care expenses are specifically included in the guidelines amount of up to $480 per child per year. Children's health care needs are to be met by requiring either parent to provide health insurance as required by state law. All nonreimbursed reasonable and necessary children's health care costs in excess of $480 per child per year shall be allocated to the obligor parent as determined by the court . . . .

(C) Cash Medical Support and Health Care Costs for Title IV-D Cases Only. All child support orders in the Title IV-D program must address how the parties will provide for the child(ren)'s health care needs through health care coverage and/or through cash medical support. Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the party responsible for providing medical support for the child(ren) does not exceed 3 percent of his or her gross income. In applying the 3-percent standard, the cost is the cost of adding the child(ren) to existing health care coverage or the difference between self-only and family health care coverage. Cash medical support payment shall not be ordered if, at the time that the order is issued or modified,

> the responsible party's income is, or such expense would reduce the responsible party's net income, below the basic subsistence limitation provided in § 4-218.

In this case, the State introduced a child support worksheet, requesting child support in the amount of $472.97 per month and an additional $77 per month for cash medical support. The district court adopted the worksheet, but noted the decree provided that Mayorga was responsible for the first $480 of nonreimbursed medical expenses. The district court reasoned that because the minor child was receiving public medical assistance, Mayorga would have very few nonreimbursed expenses. As such, the district court concluded that Martinez-Ibarra was entitled to a $480 credit to the yearly amount of cash medical support due under § 42-369. The State appeals, arguing that the credit was erroneous. We agree that the district court erred in giving Martinez-Ibarra the $480 credit.

Section 4-215(B) of the child support guidelines provides for nonreimbursed medical expenses and specifically notes that "[c]hildren's health care expenses are specifically included in the guidelines amount of up to $480 per child per year." As such, the guidelines estimate $480 as an ordinary amount of such nonreimbursed medical expenses, and that figure is then subsumed within the amount of child support that is ordered. Any nonreimbursed expenses exceeding $480 are prorated between the parties.

As applied to this case, and many similar cases, this means that while Mayorga has been ordered to pay the first $480 in nonreimbursed medical expenses, in essence this $480 has already been paid in by both parents. In paying the first $480 in nonreimbursed medical expenses, the responsible parent, here Mayorga, is essentially paying out funds previously set aside for this purpose. Thus, by giving Martinez-Ibarra a $480 credit, the district court has simply undone what was intended to be accomplished by the child support guidelines. Nor is there any authority in the guidelines or otherwise for the giving of a credit in this situation.

Moreover, these nonreimbursed medical expenses are intended to be separate from health insurance or cash medical support payments. The two types of medical costs are governed

by different subsections of the child support guidelines. Section 4-215(B) of the guidelines provides specifically for nonreimbursed medical expenses, while § 4-215(A) and (C) set forth the guidelines with respect to health insurance and cash medical support.

Also, the plain language of § 4-215(C) of the guidelines, as well as of § 42-369(2)(a), indicates that cash medical support is intended as a substitute for health insurance in situations in which health insurance is unavailable. And health insurance is the ultimate example of a *reimbursed* medical expense, as opposed to those *nonreimbursed* medical expenses envisioned by § 4-215(B). This is reinforced when considering the statutory definition of cash medical support: the payment of "an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment."[8]

We conclude that the district court erred when it gave Martinez-Ibarra a credit when calculating the amount of cash medical support owed. We reverse the decision of the district court and remand this cause with instructions to recalculate the amount of cash medical support and child support owed by Martinez-Ibarra.

Cash Medical Support as Deduction on Worksheet 1.

In addition, we note that the State's child support calculation worksheet, which was largely adopted by the district court, provided Martinez-Ibarra with a deduction against his income for the cash medical support he owes. We also note that this is not a deduction provided for by the guidelines[9] or the worksheet itself, and we could find no authority for it in statute. A district court may, of course, deviate from the guidelines in certain instances.[10] However, the guidelines state that "[i]n the event of a deviation, the reason for the deviation shall be contained in the findings portion of the decree or order, or worksheet 5 should be completed by the court and filed in the

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[8] *Id.*

[9] See Neb. Ct. R. § 4-205.

[10] Neb. Ct. R. § 4-203.

court file."[11] But in this case, no such reason was contained in our record.

Therefore, on remand, we encourage the district court to also review the deductions on worksheet 1 of the child support guidelines to determine whether a deviation for Martinez-Ibarra's cash medical support payment would be appropriate.

CONCLUSION

The decision of the district court is reversed, and the cause remanded for a redetermination of cash medical support and child support.

REVERSED AND REMANDED.

WRIGHT, J., not participating.

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[11] *Id.*