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[7] The requirement of standing is fundamental to a court's exercising jurisdiction, and litigants cannot confer subject matter jurisdiction on a judicial tribunal by either acquiescence or consent.[18] In this case, FCID and the DNR stipulated to standing, but FCID made no claim that it had suffered an injury in fact. Because FCID did not plead an injury in fact, it does not have standing and we do not have jurisdiction over FCID's claims.

CONCLUSION

FCID has failed to plead an injury in fact and therefore has not established standing. Without standing, we have no jurisdiction over FCID's claims, and we therefore dismiss for lack of jurisdiction.

APPEAL DISMISSED.

WRIGHT and CONNOLLY, JJ., not participating.

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[18] *State v. Baltimore*, 242 Neb. 562, 495 N.W.2d 921 (1993).

RONALD FRY, APPELLANT, V. JANET R. FRY, APPELLEE.

800 N.W.2d 671

Filed July 29, 2011. No. S-10-698.

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.

Appeal from the District Court for Douglas County: THOMAS A. OTEPKA, Judge. Affirmed.

David A. Domina and, of Counsel, Mark D. Raffety, of Domina Law Group, P.C., L.L.O., for appellant.

Susan A. Anderson and Molly M. Blazek, of Anderson & Bressman Law Firm, P.C., L.L.O., for appellee.

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

MILLER-LERMAN, J.

NATURE OF CASE

Ronald Fry appeals orders of the district court for Douglas County filed June 14, 2010. The court entered an amended qualified domestic relations order (QDRO) which, in addition to stating that Janet R. Fry was entitled to an absolute amount from Ronald's profit-sharing plan, awarded Janet postjudgment interest thereon for the period commencing with entry of the decree of dissolution on July 17, 2006, during the pendency of a previous appeal which had challenged an earlier version of the QDRO and concluding on June 10, 2010. The district court did not err when it ordered postjudgment interest. We affirm.

STATEMENT OF FACTS

Ronald and Janet's marriage was dissolved pursuant to a decree of dissolution entered by the district court on July 17, 2006. The decree included the following provision:

> 14. Profit[-]Sharing Plan. [Ronald] enjoys an American Bar Association AKC Profit[-]sharing plan with an accumulated value of $635,243 as of January 1, 2005. All of the accumulation has occurred during the course of the marriage. There are tax consequences for withdrawals from the plan by either party, but either party will determine by their own choices how and when the taxable events will occur. [Ronald] is awarded the profit[-]sharing plan. [Janet] is awarded a portion of the plan which is $182,599.00. Counsel shall prepare a [QDRO] to facilitate transfer of the funds.

No QDRO was entered prior to September 2008, when Ronald filed a motion to reopen the case, and Ronald and Janet filed separate motions to compel entry of their respective competing proposed QDROs. After an initial hearing, subsequent motions to amend by each party, and an additional hearing, the district court on December 15, 2008, entered an amended QDRO, which awarded Janet $182,599, together with interest thereon at the rate of 6.849 percent from July 17, 2006, until December 8, 2008.

Ronald appealed the December 15, 2008, QDRO and related orders to the Nebraska Court of Appeals. Ronald claimed, inter

alia, that the district court had erred when it treated the division of retirement funds as a monetary judgment consisting of an absolute dollar amount rather than as a judgment for a percentage of the funds and when it awarded postjudgment interest on Janet's share of the retirement funds accruing from the date of the decree of dissolution. See *Fry v. Fry*, 18 Neb. App. 75, 775 N.W.2d 438 (2009). The Court of Appeals determined that the decree of dissolution "plainly awarded Ronald the profit-sharing plan and awarded Janet $182,599 from the plan" and concluded therefore that the QDRO properly awarded Janet the dollar amount of $182,599 rather than a particular percentage of the plan. 18 Neb. App. at 79, 775 N.W.2d at 442. The Court of Appeals cited *Kullbom v. Kullbom*, 215 Neb. 148, 337 N.W.2d 731 (1983), for the proposition that interest on the unpaid balance of pension and profit-sharing funds shall accrue from the date of the divorce decree and concluded that "the district court did not err in awarding interest from July 17, 2006—the date of the divorce decree—because that is when Janet was assigned her share of Ronald's profit-sharing plan." 18 Neb. App. at 81, 775 N.W.2d at 443. The Court of Appeals affirmed the orders appealed.

After the affirmance, Janet filed motions in the district court to reopen the case and to enter an amended QDRO. She sought to amend the QDRO which had been affirmed in *Fry* to provide for interest that had accrued during the appeal of the prior orders. Ronald opposed the amendment on the basis that he had not filed a supersedeas bond during the appeal or taken any action that would have prevented Janet from executing on the prior QDRO. Janet noted in response that one of the issues on appeal was whether the QDRO properly provided that she was to receive a specific dollar amount from the retirement funds or whether the QDRO should have provided that she was to receive a certain percentage of the plan. She argued that it would have been unwise to execute on the QDRO before that issue was resolved because if it had been resolved in Ronald's favor, she could have owed him money back.

Following a hearing, on June 14, 2010, the district court ordered the case reopened and entered the amended QDRO proposed by Janet. It is this QDRO and related orders which

are at issue in this appeal. The QDRO provided for interest from the date of the decree of dissolution through June 10, 2010, the date of the hearing on the motions before the court. The QDRO provided in part as follows:

> [Janet] shall be awarded the sum of One Hundred Eighty Two Thousand Five Hundred Ninety Nine and no/100 Dollars ($182,599.00) from [Ronald's] 401(k) Profit[-]Sharing Plan, together with interest thereon at the rate of 6.849% from July 17, 2006, until June 10, 2010, for a total of $231,385.24, said amount representing the total amount awarded to [Janet]. ($182,599 + $48,786.24 interest). Said amount shall be paid from [Ronald's] Income Plus Fund to assure that said funds are paid in cash as opposed to equities, and [Janet] is entitled to an immediate distribution from the Plan of the entire balance of [Janet's] account and any earnings thereon in accordance with the directions specified by [Janet].

Ronald appeals the order to reopen the case and the amended QDRO entered by the district court.

ASSIGNMENT OF ERROR

Ronald claims, summarized and restated, that the district court erred when it awarded Janet postjudgment interest for the period after the decree encompassing the pendency of a prior appeal of an earlier QDRO and up to June 10, 2010.

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. *State ex rel. Wagner v. Gilbane Bldg. Co.*, 280 Neb. 223, 786 N.W.2d 330 (2010).

ANALYSIS

Ronald claims that the district court erred when it awarded Janet additional postjudgment interest following the remand from the Court of Appeals' decision in *Fry v. Fry*, 18 Neb. App. 75, 775 N.W.2d 438 (2009). The earlier QDRO that had been appealed and affirmed by the Court of Appeals in *Fry* awarded postjudgment interest from the date of the decree

through December 8, 2008. On remand, the district court extended the award of postjudgment interest through June 10, 2010, which period included the pendency of the appeal resulting in *Fry*. We conclude that the award of additional postjudgment interest up to June 10, 2010, now challenged on appeal, was not error.

In *Fry*, the Court of Appeals determined that the district court did not err when it awarded interest from the date of the divorce decree "because that is when Janet was assigned her share of Ronald's profit-sharing plan." 18 Neb. App. at 81, 775 N.W.2d at 443. The Court of Appeals reasoned that the award was required by Neb. Rev. Stat. § 45-103.01 (Reissue 2010), which provides that postjudgment interest "shall accrue on decrees and judgments for the payment of money from the date of entry of judgment until satisfaction of judgment." The Court of Appeals cited *Bowers v. Lens*, 264 Neb. 465, 648 N.W.2d 294 (2002), and noted that the language of § 45-103.01 is mandatory and that a court of equity does not have discretion to withhold interest on decrees or judgments for the payment of money. The Court of Appeals also relied on *Kullbom v. Kullbom*, 215 Neb. 148, 337 N.W.2d 731 (1983), in which this court concluded that interest on the unpaid balance of a specific dollar amount of a pension and profit-sharing trust awarded in a divorce decree should accrue from the date of the decree. Based on these authorities, the Court of Appeals concluded in *Fry* that the divorce decree in this case awarded Janet a specific dollar amount from Ronald's profit-sharing plan and that she was entitled to postjudgment interest on that amount from the date of the decree. Ronald petitioned for further review of *Fry*. We denied the petition.

We agree with the Court of Appeals' reasoning in *Fry* that Janet was awarded a specific dollar amount of the plan and its conclusion that Janet was entitled to postjudgment interest from the date of the decree until the satisfaction of judgment. We extend the reasoning of *Fry* and conclude in this case that because the judgment had not been satisfied at the time the cause was remanded to the district court after *Fry* and the case reopened, the court did not err when it entered a QDRO that extended the award of postjudgment interest through the

June 10, 2010, hearing. Janet continued to be entitled to postjudgment interest pursuant to § 45-103.01 from the date of decree until she received the specific dollar amount that she had been awarded. Therefore, it was appropriate for the court to update the award of postjudgment interest until Janet actually received her share of the profit-sharing plan.

Ronald argues that Janet should not have been awarded additional postjudgment interest beyond the December 8, 2008, date specified in the earlier QDRO, because she could have executed on that QDRO during the pendency of the appeal. In this regard, he notes that he did not post a supersedeas bond and that therefore Janet was not prevented from executing on the QDRO and receiving her share of the profit-sharing plan during the appeal.

We determine that although Janet could have executed on the earlier QDRO, there was nothing that required her to do so and there was no conclusive reason to cut off the accrual of postjudgment interest during the appeal. A supersedeas bond serves to suspend further proceedings on the judgment or decree from which an appeal is taken. See *Tilt-Up Concrete v. Star City/Federal*, 261 Neb. 64, 621 N.W.2d 502 (2001). However, Ronald points to no authority to the effect that the absence of a supersedeas bond requires a party to execute on a judgment during an appeal. Indeed, we observe, but need not comment on the fact, that there may be valid reasons that a person or entity who can execute on a judgment chooses not to do so immediately.

In connection with Ronald's execution discussion, we note that Neb. Rev. Stat. § 25-1515 (Reissue 2008) generally provides that a judgment shall become dormant if it has not been executed upon within 5 years. The statute thus indicates that within that 5-year period, the party who obtained a judgment can execute on it at a time of his, her, or its choosing. Referring to § 25-1515, we note that the QDRO at issue in this case included postjudgment interest through June 10, 2010, which was within 5 years after the July 17, 2006, date of the divorce decree. Therefore, in terms of the dormancy statute, it cannot be said that the judgment had been outstanding an unreasonable period of time.

Janet asserts that she did not execute on the earlier QDRO during the appeal, because the appeal involved an issue regarding whether the decree awarded a specific dollar amount or a percentage of the plan. She argues that if she had executed on the QDRO based on a specific dollar amount and it had been determined on appeal that she was actually awarded a percentage rather than a specific dollar amount, a correction may have been warranted which might have required Janet to pay money back into the plan. Janet instead chose to await the resolution of the appeal. We find no authority indicating that Janet could not await execution during the pendency of the appeal. Ronald points to no authority which would serve as a basis to cut off the accrual of postjudgment interest, the accrual of which, as noted above, is mandatory under § 45-103.01.

Ronald also argues that the award of postjudgment interest resulted in an impermissible "double recovery" to Janet. We are unclear as to Ronald's reasoning on this point. We note, however, that Janet was awarded a specific dollar amount of $182,599 from Ronald's profit-sharing plan in the July 17, 2006, decree. In the June 2010 QDRO at issue in this appeal, she was awarded postjudgment interest on that amount from July 16, 2006, through June 10, 2010. The QDRO on appeal further provided that after Janet's share had been put into a separate account, which evidently would occur on or shortly after June 10, she would be entitled to distributions of cash from the plan and, after segregation and the cessation of postjudgment interest, of earnings, if any, on those funds from the time the funds were put into a separate account until they were actually distributed. In sum, Janet was awarded postjudgment interest from July 17, 2006, through June 10, 2010, and she was entitled to earnings on the funds that would be put into a separate account from June 10, or whatever later date the funds were separated, until the funds were distributed in cash to her. Therefore, there were two distinct periods bearing different economic consequences: the first period encompassed the time during which Janet was awarded postjudgment interest, and the second period encompassed the time during which Janet received earnings on the funds. Contrary to Ronald's assertion, under the controlling order, there was not a period when Janet

was awarded both postjudgment interest and earnings on her awarded share of the profit-sharing plan. We find this argument to be without merit.

CONCLUSION

The district court properly reopened the case and did not err when it determined that Janet was entitled to postjudgment interest from the date of the divorce decree until June 10, 2010, the date set forth in the QDRO at issue in this appeal. Accordingly, we affirm the orders of the district court.

AFFIRMED.

WRIGHT, J., not participating.

IN RE INTEREST OF CHRISTOPHER T., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. CHRISTOPHER T., APPELLANT.

801 N.W.2d 243

Filed July 29, 2011. No. S-10-1105.

1. **Juvenile Courts: Appeal and Error.** Juvenile cases are reviewed de novo on the record, and an appellate court is required to reach a conclusion independent of the juvenile court's findings.
2. **Statutes.** In the absence of anything indicating to the contrary, statutory language is to be given plain and ordinary meaning; when the words of a statute are plain, direct, and unambiguous, no interpretation is necessary or will be indulged to ascertain their meaning.
3. **Due Process: Proof.** The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to instruct the fact finder concerning the degree of confidence our society thinks he or she should have in the correctness of factual conclusions for a particular type of adjudication.
4. **Courts: Expert Witnesses.** *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), require the trial court to act as a gatekeeper to ensure that expert testimony is scientifically valid and can be properly applied to the facts in issue, and therefore helpful to the trier of fact.
5. **Trial: Presumptions: Evidence.** In a bench trial, there is a presumption that the finder of fact disregards inadmissible evidence.
6. **Trial: Expert Witnesses: Pretrial Procedure.** To sufficiently call specialized knowledge into question under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,