factors in its award of attorney fees, and its finding is not clearly untenable. We therefore find that the district court did not abuse its discretion in the amount of attorney fees it awarded. This assignment of error is without merit.

(c) Expert Witness Testimony

Finally, Prime Home Care argues that the trial court erred in admitting the expert testimony of a lexicographer. Prime Home Care alleges that this testimony was not helpful to the fact finder and did not have sufficient foundation. The expert witness testified as to the descriptiveness of the name "Compassionate Care Hospice." Because we did not decide whether "Compassionate Care Hospice" was merely descriptive, but concentrated our analysis on whether it had acquired secondary meaning, we need not address this assignment of error.

VI. CONCLUSION

We find that the name "Compassionate Care Hospice" acquired secondary meaning as related to Prime Home Care's hospice services. We further find that the district court did not err in granting an injunction and attorney fees to Prime Home Care. Finally, we find that Prime Home Care's assignment of error on cross-appeal regarding attorney fees is without merit.

AFFIRMED.

WRIGHT, J., not participating in the decision.

STATE OF NEBRASKA, APPELLEE, V.
TIMOTHY D. JIMENEZ, APPELLANT.
808 N.W.2d 352

Filed January 20, 2012. No. S-11-303.

1. **Statutes: Appeal and Error.** Statutory interpretation presents a question of law, for which an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below.
2. **Extradition and Detainer: Words and Phrases.** A detainer is a notification filed with the institution in which an individual is serving a sentence, advising the prisoner that he or she is wanted to face criminal charges pending in another jurisdiction.

3. **Extradition and Detainer.** A detainer for a prisoner who has been convicted but not sentenced does not relate to an untried indictment, information, or complaint and thus does not trigger the procedural requirements of Article III of the interstate Agreement on Detainers.
4. **Appeal and Error.** An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.

Appeal from the District Court for Cheyenne County: DEREK C. WEIMER, Judge. Affirmed.

Donald J.B. Miller, of Matzke, Mattoon & Miller, L.L.C., L.L.O., for appellant.

Jon Bruning, Attorney General, George R. Love, and Jordan M. Osborne, Senior Certified Law Student, for appellee.

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

STEPHAN, J.

Article III of the interstate Agreement on Detainers (Agreement)[1] prescribes the procedure by which a prisoner against whom a detainer has been lodged may demand a speedy disposition of outstanding charges.[2] This procedure may be utilized where there is pending in a party state "any untried indictment, information or complaint on the basis of which a detainer has been lodged against [a] prisoner" incarcerated in another party state.[3] The issue presented in this appeal is whether a detainer for a person who has been convicted of a criminal offense but not sentenced falls within this provision. We conclude that the district court for Cheyenne County did not err in determining that such a detainer does not fall within this provision of the Agreement, and we therefore affirm its judgment.

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[1] Neb. Rev. Stat. § 29-759 (Reissue 2008). See 18 U.S.C. app. 2, § 2 (2006).

[2] *State v. Reed*, 266 Neb. 641, 668 N.W.2d 245 (2003).

[3] § 29-759.

BACKGROUND

Timothy D. Jimenez was charged with possession of methamphetamine, a Class IV felony, and was further alleged to be a habitual criminal. On March 9, 2010, pursuant to a plea agreement, he pled guilty to the possession charge and the State dismissed the habitual criminal allegation. The matter was set for sentencing on April 27.

Prior to the sentencing hearing, Jimenez was arrested in Colorado. He failed to appear on April 27, 2010, and the Cheyenne County Attorney's office obtained a bench warrant for his arrest. At some point thereafter, a detainer was placed on Jimenez in Colorado by the Cheyenne County sheriff's office.

On February 22, 2011, Jimenez filed a request for final disposition in Cheyenne County. He alleged that he was serving a term of imprisonment in Colorado and that as a result of the detainer, he was unable to access all of the Colorado institution's educational and treatment alternatives. He asked to be brought before the Nebraska court for final disposition or for an order directing the State of Nebraska to release the detainer. The State filed an objection to the request.

On March 3, 2011, Jimenez filed a motion asking the court to order the Cheyenne County Attorney's office to produce an "Inmate Status Certificate" from the official who had custody of Jimenez, in accordance with § 29-759. Jimenez alleged that he had reason to believe that the certificate was in the custody of the Cheyenne County Attorney, the sheriff, or other law enforcement agency.

In an order dated March 25, 2011, the Cheyenne County District Court determined that the Agreement did not apply, because Jimenez had no untried matters pending in Nebraska. The court found that Jimenez had been convicted of the offense when his plea was accepted and that therefore, guilt had been established beyond a reasonable doubt. The only remaining matter was the imposition of the sentence. The court denied Jimenez' motion for a court order and request for final disposition, and Jimenez appealed. We granted the State's petition to bypass pursuant to Neb. Rev. Stat. § 24-1106 (Reissue 2008).

ASSIGNMENT OF ERROR

Jimenez asserts, summarized, that the district court erred in determining he was not eligible to invoke the Agreement to obtain a final disposition of his Nebraska conviction.

STANDARD OF REVIEW

[1] Statutory interpretation presents a question of law, for which an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below.[4]

ANALYSIS

[2] The Agreement is a congressionally sanctioned interstate compact to which Nebraska is a contracting party.[5] It is codified in § 29-759. The Agreement does not define "detainer," but we have stated that a detainer is a notification filed with the institution in which an individual is serving a sentence, advising the prisoner that he or she is wanted to face criminal charges pending in another jurisdiction.[6]

Article I of the Agreement provides in part:

> [C]harges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints.[7]

The Agreement states throughout that it applies to detainers filed in connection with "any untried indictment, information or complaint."[8] Article III(a) of the Agreement states:

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[4] *State v. Parks*, 282 Neb. 454, 803 N.W.2d 761 (2011).

[5] See *State v. Rieger*, 270 Neb. 904, 708 N.W.2d 630 (2006).

[6] *Reed, supra* note 2.

[7] § 29-759.

[8] *Id.*

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days . . . .[9]

In Article III(d), the Agreement also provides:

> Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. . . . If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.[10]

The issue in the case at bar is whether the phrase "untried indictments, informations or complaints" applies to Jimenez' Nebraska case, in which he has been convicted but not sentenced. Although we have not previously considered the meaning of this phrase in this or similar contexts, other courts have done so.

In *Carchman v. Nash*,[11] the U.S. Supreme Court considered whether a detainer based upon a probation violation fell within the language of the Agreement. In concluding that it did not, the Court reasoned that "[t]he most natural interpretation of the words 'indictment,' 'information,' and 'complaint' is that they refer to documents charging an individual with having

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[9] *Id.*

[10] *Id.*

[11] *Carchman v. Nash*, 473 U.S. 716, 105 S. Ct. 3401, 87 L. Ed. 2d 516 (1985).

committed a criminal offense."[12] The Court stated that its interpretation is "reinforced by the adjective 'untried,' which would seem to refer to matters that can be brought to full trial, and by Art. III's requirement that a prisoner who requests final disposition of the indictment, information, or complaint 'shall be *brought to trial* within 180 days.'"[13] The Court concluded that this interpretation was consistent with the legislative history of the Agreement.

Other courts have interpreted the language of the Agreement in a similar manner. For example, in *State v. Barefield*,[14] the Washington Supreme Court applied the reasoning of *Carchman* and stated, "Neither the history nor the purposes of the [Agreement] indicate that it ought to be applied to sentencing detainers." A New Mexico appellate court in *State v. Sparks*[15] also cited *Carchman* in support of its conclusion that "a request for the disposition of an outstanding sentencing is not cognizable under the [Agreement]." The court determined that "sentencing, like probation revocation, does not fall within the plain meaning of an 'untried indictment, information or complaint'" and that therefore, the provisions of the Agreement did not apply.[16] The court reasoned that use of the adjective "untried" supported a conclusion that the Agreement does not apply when a defendant has been convicted but not sentenced.[17]

In *Moody v. Corsentino*,[18] the Colorado Supreme Court held that the Agreement did not apply to a prisoner's request to be sentenced in an action in which he had been convicted. The court reasoned that while indictments, informations, and complaints are all documents that institute charges against a

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[12] *Id.* at 724.

[13] *Id.* (emphasis in original).

[14] *State v. Barefield*, 110 Wash. 2d 728, 733, 756 P.2d 731, 734 (1988) (en banc).

[15] *State v. Sparks*, 104 N.M. 62, 64, 716 P.2d 253, 255 (N.M. App. 1986).

[16] *Id.* at 65, 716 P.2d at 256.

[17] *Id.*

[18] *Moody v. Corsentino*, 843 P.2d 1355 (Colo. 1993).

person, "the sentencing process merely finalizes the disposition of charges that have already been tried," and that therefore, the language of the Agreement suggests that it does not extend to sentencing detainers.[19] The court concluded, "[A] detainer placing a hold on a prisoner based on an unresolved sentencing determination in another jurisdiction arising from charges for which the prisoner has already been convicted does not trigger the procedural requirements" of the Agreement.[20] Other courts are in accord.[21]

Jimenez urges that we follow two cases which reached conclusions contrary to the authorities discussed above. In *Hall v. State of Fla.*,[22] the court held that the phrase "untried indictment, information or complaint," as used in the Agreement, encompassed sentencing. The court relied on cases in which the U.S. Supreme Court and other federal courts held that a trial includes sentencing for purposes of the Sixth Amendment.[23] And in *Tinghitella v. State of Cal.*,[24] the court concluded that the terms "trial" and "final disposition" as used in the Agreement "encompass sentencing," meaning the Agreement "imposes an obligation on California to sentence a Texas prisoner in timely fashion where California has secured the conviction of the prisoner in California but he has not been sentenced before his incarceration in Texas on a Texas conviction."

We are not persuaded by these cases. As the court noted in *Barefield*,[25] the holding of *Tinghitella* is arguably dicta because the defendant had not complied with the Agreement's requirements. And the reasoning and conclusion of *Tinghitella*

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[19] *Id.* at 1370.

[20] *Id*. at 1372.

[21] See, *People v. Castoe*, 86 Cal. App. 3d 484, 150 Cal. Rptr. 237 (1978); *People v Barnes*, 93 Mich. App. 509, 287 N.W.2d 282 (1979); *People v. Randolph*, 85 Misc. 2d 1022, 381 N.Y.S.2d 192 (N.Y. Crim. 1976); *State v. Barnes*, 14 Ohio App. 3d 351, 471 N.E.2d 514 (1984).

[22] *Hall v. State of Fla.*, 678 F. Supp. 858 (M.D. Fla. 1987).

[23] *Id*.

[24] *Tinghitella v. State of Cal.*, 718 F.2d 308, 311 (9th Cir. 1983).

[25] *Barefield, supra* note 14.

were called into question by the subsequent decision in *Carchman*.[26]

Other courts have taken the position that "trial," as used in the Agreement, does not include sentencing. In *U.S. v. Coffman*,[27] the court disagreed with *Tinghitella*, and held that "'trial' does not include sentencing for purposes of the [Agreement's] anti-shuttling provisions." The court agreed with the *Tinghitella* court's determination that the use of "final disposition" in the Agreement includes sentencing, but determined that the Agreement "differentiates between the trial phase of a proceeding and all post-trial procedures, including sentencing."[28] It is true that in Nebraska, the judgment in a criminal case is the sentence.[29] But it does not logically follow that a pending sentencing renders an indictment, information, or complaint "untried."

[3] We therefore hold that a detainer for a prisoner who has been convicted but not sentenced does not relate to an "untried indictment, information or complaint" and thus does not trigger the procedural requirements of the Agreement. The district court did not err in concluding that the Agreement does not apply to Jimenez and in denying his motion for a court order and request for final disposition.

[4] Jimenez also argues that the district court erred in not ordering the State of Nebraska to request an "Inmate Status Certificate" from the Colorado Department of Corrections. Having determined that the Agreement does not apply to the pending Nebraska proceedings, it is unnecessary for us to address this issue. An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.[30]

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[26] *Id*.

[27] *U.S. v. Coffman*, 905 F.2d 330, 331 (10th Cir. 1990).

[28] *Id*. at 332.

[29] *State v. Yos-Chiguil*, 278 Neb. 591, 772 N.W.2d 574 (2009).

[30] *Law Offices of Ronald J. Palagi v. Howard*, 275 Neb. 334, 747 N.W.2d 1 (2008).

CONCLUSION

For the reasons discussed, the judgment of the district court is affirmed.

AFFIRMED.

WRIGHT and GERRARD, JJ., not participating.