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the district court to recalculate Timothy's income, we need not address Janna's assertion further.

V. CONCLUSION

Upon our de novo review of the record, we affirm the district court's decision to award custody of the parties' children to Janna and its division of the parties' marital estate. However, we find that the court abused its discretion in calculating Timothy's income. As a result of this error, we remand the matter to the district court to recalculate Timothy's annual income and to provide a recitation of the factual basis for its calculation. In addition, we reverse the district court's determinations concerning Timothy's child support obligation and Janna's alimony award, because the court should reconsider these awards in light of any changes to the calculation of Timothy's income.

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED WITH DIRECTIONS.

GEM HUBBART, APPELLEE, V. HORMEL FOODS, APPELLANT, AND STATE OF NEBRASKA, WORKERS' COMPENSATION TRUST FUND, APPELLEE.

822 N.W.2d 444

Filed November 13, 2012. No. A-12-159.

1. **Workers' Compensation: Appeal and Error.** A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award.
2. ____: ____. In determining whether to affirm, modify, reverse, or set aside a judgment of the Workers' Compensation Court review panel, a higher appellate court reviews the finding of the trial judge who conducted the original hearing; the findings of fact of the trial judge will not be disturbed on appeal unless clearly wrong.
3. ____: ____. With respect to questions of law in workers' compensation cases, an appellate court is obligated to make its own determination.

4. **Workers' Compensation: Witnesses.** The Workers' Compensation Court, as the trier of fact, is the sole judge of the credibility of witnesses and the weight to be given to their testimony.

Appeal from the Workers' Compensation Court. Affirmed.

James L. Quinlan, of Fraser Stryker, P.C., L.L.O., for appellant.

Michael P. Dowd, of Dowd, Howard & Corrigan, L.L.C., for appellee Gem Hubbart.

INBODY, Chief Judge, and SIEVERS and MOORE, Judges.

INBODY, Chief Judge.

INTRODUCTION

Hormel Foods (Hormel) appeals the order of the Nebraska Workers' Compensation Court approving an amended vocational rehabilitation plan for the appellee, Gem Hubbart, to reinstate GED training for 1 additional year. For the following reasons, we affirm.

STATEMENT OF FACTS

This case began in 2001, when Hubbart filed an amended petition with the trial court alleging that she had sustained injuries to her bilateral upper extremities in an accident arising out of and in the course of her employment with Hormel. Eventually, after several years of proceedings, Hubbart was awarded temporary total disability for her left hand and found to have a 12-percent permanent functional impairment of her left upper extremity. The trial court further found that Hubbart was entitled to temporary total indemnity for depression, which determination was reversed by this court. See *Hubbart v. Hormel Foods Corp.*, 15 Neb. App. 129, 723 N.W.2d 350 (2006).

On September 17, 2010, Hubbart filed an amended petition with the trial court alleging that on November 3, 2008, Hormel filed a motion to terminate the vocational plan, which motion was denied by the trial court on July 15, 2009. The amended petition alleges that shortly thereafter, Hubbart returned to Thailand as a result of her mother's death, and that

her participation with the vocational plan was discontinued. Hubbart alleged that since returning to the United States, she had attempted to reinstate the vocational program, but was denied payment of those services by Hormel. Hormel filed an answer alleging that the most recent approved vocational rehabilitation plan had concluded on June 5, 2009, and that no additional plan had been approved by a vocational rehabilitation specialist. The State of Nebraska, Workers' Compensation Trust Fund, also filed an answer generally denying the allegations contained in the amended petition. Representatives for the trust fund have notified this court that no responsive brief or further participation would be undertaken with regard to the appeal.

On February 9, 2011, the trial court entered an order finding that Hubbart remained entitled to vocational rehabilitation services in order to provide the opportunity for her to return to suitable employment. The court found that Hubbart had generally attended all available classes and received tutoring but was unable to pass the four remaining subject tests in order to obtain her diploma through the GED program. The court found that Hubbart's progress was interrupted by her return to Thailand following the death of her mother. The court ordered the court-appointed counselor to submit the amended plan for continuation of GED classes and warned that should Hubbart not complete such classes or fail to pass the remaining GED subject tests, "it is highly unlikely the Court will approve any further vocational services."

Michelle Holtz, a rehabilitation consultant, had been involved in providing vocational rehabilitation services to Hubbart since the inception of the case in 2001. On April 28, 2011, Holtz filed the amended plan of vocational rehabilitation which indicates that the plan was approved by Holtz and Hubbart and was also signed by the vocational rehabilitation specialist with a note to "[i]mplement [it] per [the trial court's] order [of] 2/9/11." Hormel filed objections to the plan, and a hearing was held on the matter.

During the hearing, the trial court received numerous exhibits and heard arguments. Hubbart submitted extensive evidence regarding her participation in vocational rehabilitation services,

in addition to the current recommendation by the previously appointed rehabilitation consultant, Holtz. The progress reports indicate that since the adoption of the April 2008 vocational rehabilitation plan, Hubbart had consistently attended all of her classes and completed all of her tutoring hours, but had been unable to pass all of the requisite subject tests in order to obtain her diploma through the GED program. At the time of trial, Hubbart needed to pass four subjects.

The trial court also received into evidence a rebuttal report regarding Holtz' rehabilitation plan prepared by a rehabilitation specialist, Patricia Conway. The report indicated that Hubbart should have been participating in skills training programs and not GED programs. Conway opined that there were several jobs available to Hubbart which did not require a GED program diploma and would be better suited to Hubbart with short-term skills training. Conway stated it was unlikely that Hubbart would obtain such a diploma and would certainly be unable to obtain one as set forth in Holtz' plan, because Hubbart had been unable to demonstrate any increase in her skill levels. Conway concluded that job placement would be the more appropriate form of vocational rehabilitation for Hubbart.

On July 14, 2011, the trial court issued an order finding that the court had previously approved a plan for continued GED program classes as proposed by Holtz and that the formal plan had been approved by the vocational rehabilitation section of the court. The trial court formally adopted the plan and reiterated that continuation of the plan beyond the timeframe adopted was highly unlikely.

Hormel filed a notice of appeal to the review panel, which subsequently affirmed the order in its entirety, finding that pursuant to Neb. Rev. Stat. § 48-162.01(7) (Reissue 2010), the trial court was within its authority to develop an amended plan of vocational rehabilitation. The review panel also determined that the trial court had chosen to adopt Holtz' recommendations, instead of Conway's recommendations, and that it was not an issue for the review panel to reweigh. Hormel has timely appealed to this court.

ASSIGNMENTS OF ERROR

Hormel assigns, rephrased and consolidated, that the trial court erred by approving the amended vocational plan without submission of the plan to a vocational rehabilitation specialist, in violation of § 48-162.01, and that the evidence does not support the adoption of the ordered vocational plan.

STANDARD OF REVIEW

[1-3] A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. *Pearson v. Archer-Daniels-Midland Milling Co.*, 282 Neb. 400, 803 N.W.2d 489 (2011). In determining whether to affirm, modify, reverse, or set aside a judgment of the Workers' Compensation Court review panel, a higher appellate court reviews the finding of the trial judge who conducted the original hearing; the findings of fact of the trial judge will not be disturbed on appeal unless clearly wrong. *Id.* With respect to questions of law in workers' compensation cases, an appellate court is obligated to make its own determination. *Id.*

ANALYSIS

Approval of Amended Vocational Plan.

Hormel argues that the trial court erred by approving the amended vocational rehabilitation plan without first submitting the plan to a vocational rehabilitation specialist for an independent evaluation pursuant to § 48-162.01.

In support of its argument, Hormel cites to the case of *Rodriguez v. Monfort, Inc.*, 262 Neb. 800, 635 N.W.2d 439 (2001). In *Rodriguez v. Monfort, Inc.*, the employee was awarded benefits for his work-related injuries, which benefits included an order for vocational rehabilitation services. The Nebraska Supreme Court addressed the rebuttable presumption of correctness pursuant to § 48-162.01(3) (Cum. Supp. 2000)

and found that a vocational rehabilitation plan had not been developed and that no plan had been approved by a specialist to which a rebuttable presumption could attach. The court held that the plain language of the statute "requires both the submission of a plan by the vocational rehabilitation counselor and the approval of that plan by a Workers' Compensation Court vocational rehabilitation specialist in order for the plan to benefit from the rebuttable presumption of correctness." 262 Neb. at 808, 635 N.W.2d at 446-47.

The situation presented in this case is distinguishable from that presented in *Rodriguez v. Monfort, Inc.*, because this is not the institution of a new plan for vocational rehabilitation services, but the continuation of the previously approved plan. Section 48-162.01(7) (Reissue 2010) provides that the trial court may "also modify a previous finding, order, award, or judgment relating to physical, medical, or vocational rehabilitation services as necessary in order to accomplish the goal of restoring the injured employee to gainful and suitable employment, or as otherwise required in the interest of justice."

The record clearly reveals that the previously approved vocational rehabilitation plan was submitted on April 24, 2008, by Holtz, was approved by all parties, and was adopted by the trial court. The plan recommended GED training for Hubbart. Progress reports indicate that Hubbart attended class and tutoring sessions regularly, but was not able to score high enough on some subject testing to pass pursuant to GED program standards. The progress reports indicate that Hubbart was motivated, worked hard, and was a good student. The record indicates that Hubbart's GED plan concluded on June 5, 2009, and that Hubbart took all of the GED tests required by the plan, but was unable to pass any of the four GED tests administered. Shortly thereafter, Hubbart left the United States for Thailand to care for her mother and did not return until September 2009. Hubbart immediately contacted the vocational rehabilitation services office and requested that she be able to resume her participation in GED classes. On November 18, Holtz recommended that Hubbart be given an additional year on her GED plan to afford Hubbart an opportunity to pass the four

remaining tests necessary to obtain a diploma through the GED program.

On April 28, 2011, Holtz submitted a vocational rehabilitation plan which incorporated much of the information as set forth in the April 24, 2008, plan and recommended that Hubbart be allowed to resume work on obtaining a diploma through the GED program, with an estimated completion date of May 31, 2012. This plan was not a new plan and did not set forth any recommendations or goals for Hubbart that were not included in the April 24, 2008, plan. Furthermore, Hormel has failed to mention in its argument to this court that the vocational rehabilitation specialist signed Holtz' plan, which act certifies that the individual signing has "evaluated th[e] plan in accordance with section 48-162.01(3)," with a notation to "[i]mplement per [the trial court's] order 2/9/11." Therefore, pursuant to § 48-162.01(7), we find that the trial court was within its authority to modify a previous order relating to vocational rehabilitation services and that the submission and approval of the vocational rehabilitation plan to and by a vocational rehabilitation specialist were unnecessary, even though the specialist in this case signed off on the report in accordance with § 48-162.01(3) and ordered its implementation pursuant to the trial court's orders. This assignment of error is without merit.

Adoption of Amended Vocational Rehabilitation Plan.

Hormel also argues that the trial court erred by adopting the vocational plan submitted by Holtz, because the plan did not undergo an independent evaluation and, as such, did not have a rebuttable presumption of correctness. Hormel asserts that the trial court was required to accept the vocational assessment provided by Conway because there was no other evidence before the court.

[4] The April 2008 plan prepared by Holtz had already been submitted by the parties, had been adopted by the trial court, and was entitled to a rebuttable presumption of correctness under § 48-162.01(3). The amended plan was similarly entitled to the presumption, because, contrary to Hormel's contention,

Holtz had approved the plan and the vocational rehabilitation specialist had also signed off on the plan with directions to implement it as ordered by the trial court. At the hearing on the plan, Hormel submitted a vocational needs assessment prepared by Conway to rebut that presumption. As discussed, Holtz' plan recommends an additional year of GED training for Hubbart, while Conway's report recommends that a GED program is not appropriate for Hubbart and that she should instead move forward with a short-term skills training program or a job placement plan. The trial court chose to approve Holtz' amended vocational plan over Conway's plan. The Workers' Compensation Court, as the trier of fact, is the sole judge of the credibility of witnesses and the weight to be given to their testimony. See *Parks v. Marsden Bldg Maintenance*, 19 Neb. App. 762, 811 N.W.2d 306 (2012). This assignment of error is also without merit.

CONCLUSION

For the foregoing reasons, we find that in accordance with § 48-162.01(7), the trial court modified a previous vocational rehabilitation plan and submission of that modification to a rehabilitation specialist was not required. Further, we find that the findings of the trial court were not clearly wrong. Therefore, we affirm the trial court's order in its entirety.

AFFIRMED.

LALINDA FINLEY-SWANSON, APPELLEE AND CROSS-APPELLANT, V. JEFFREY B. SWANSON, APPELLANT AND CROSS-APPELLEE.

823 N.W.2d 697

Filed November 20, 2012. No. A-11-748.

1. **Appeal and Error.** A generalized and vague assignment of error that does not advise an appellate court of the issue submitted for decision will not be considered except to the extent that it is narrowed by the specific arguments asserted in the appellant's brief.
2. **Divorce: Property Division: Alimony: Attorney Fees: Appeal and Error.** An appellate court's review in an action for dissolution of marriage is de novo on the record to determine whether there has been an abuse of discretion by the