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[13] Local 385 next claims that the public interest exception to the mootness doctrine should apply. The public interest exception to the rule precluding consideration of issues on appeal because of mootness requires the consideration of the public or private nature of the question presented, the desirability of an authoritative adjudication for guidance of public officials, and the likelihood of recurrence of the same or a similar problem.[29] Were we to reach the merits of the instant appeal, it would require an analysis of complex factors which are unique to this case. Such factors would include the proper interpretation of the minimum staffing, promotion, and call-back provisions of the original CBA; an interpretation of those terms as modified by each subsequent order issued by the Commission; a determination of which terms were encompassed by the status quo order; and a finding of whether the actions of the City amounted to a violation of those terms. It is unlikely that we will be presented with a similar factual situation. Accordingly, there is no likelihood of recurrence of the same or a similar problem, and we decline to apply the public interest exception to the mootness doctrine.

CONCLUSION

For the foregoing reasons, we conclude that the instant appeal is moot. Accordingly, the appeal is dismissed.

APPEAL DISMISSED.

WRIGHT, J., not participating.

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[29] *Stoetzel & Sons v. City of Hastings*, 265 Neb. 637, 658 N.W.2d 636 (2003).

CHAD A. HOFFERBER, APPELLEE AND CROSS-APPELLANT, V. HASTINGS UTILITIES AND EMC INSURANCE, APPELLANTS AND CROSS-APPELLEES.

803 N.W.2d 1

Filed September 9, 2011. No. S-10-894.

1. **Workers' Compensation: Appeal and Error.** A judgment, order, or award of the Workers' 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. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues presented by a case.
3. **Jurisdiction: Venue: Words and Phrases.** Jurisdiction and venue are not synonymous and interchangeable functions in litigation.
4. **Jurisdiction: Words and Phrases.** Jurisdiction is the inherent power or authority to decide a case.
5. **Venue: Words and Phrases.** Venue is the place of trial of an action—the site where the power to adjudicate is to be exercised.
6. **Venue.** Venue is ordinarily not jurisdictional.
7. **Venue: Waiver.** Unlike jurisdiction, venue is a personal privilege which, if not raised by a party, is waived unless prohibited by law.
8. **Jurisdiction.** Litigants cannot confer jurisdiction on a judicial tribunal by acquiescence or consent.
9. **Workers' Compensation: Jurisdiction: Venue.** Neb. Rev. Stat. § 48-177 (Reissue 2010) is not jurisdictional; it simply specifies the venue for hearing the cause.
10. **Workers' Compensation: Jurisdiction: Statutes.** The Workers' Compensation Court, as a statutorily created court, has only such authority as has been conferred upon it by statute, and its power cannot extend beyond that expressed in the statute.
11. **Workers' Compensation: Intent.** Neb. Rev. Stat. § 48-162.01(7) (Reissue 2010) is intended to prevent an employee's refusal to improve his or her medical condition or earning capacity from causing an employer to pay more workers' compensation benefits than it should.
12. **Workers' Compensation: Proof.** Neb. Rev. Stat. § 48-162.01(7) (Reissue 2010) only authorizes the complete termination of a claimant's right to benefits under the Nebraska Workers' Compensation Act if evidence is presented to support a finding that had the employee availed himself or herself of the benefits offered, the employee would no longer be disabled.
13. **Workers' Compensation.** Neb. Rev. Stat. § 48-162.01(7) (Reissue 2010) cannot be used solely to punish or coerce an injured worker. There must be evidence to support a finding that the worker's disability would have been reduced had the worker cooperated with medical treatment or vocational rehabilitation.
14. **Trial: Judges: Presumptions.** It is presumed in a bench trial that the judge was familiar with and applied the proper rules of law unless it clearly appears otherwise.
15. **Workers' Compensation.** Neb. Rev. Stat. § 48-162.01(7) (Reissue 2010) is intended to permit the compensation court to modify rehabilitation plans in response to changed circumstances following the entry of the initial plan. It does not apply to situations in which a worker has refused to cooperate with treatment or rehabilitation.

Appeal from the Workers' Compensation Court. Affirmed.

Dallas D. Jones, Amanda A. Dutton, and Andrea A. Ordonez, of Baylor, Evnen, Curtiss, Grimit & Witt, L.L.P., for appellants.

Dirk V. Block and Steven J. Riekes, of Marks, Clare & Richards, L.L.C., for appellee.

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

GERRARD, J.

Hastings Utilities and its workers' compensation insurance carrier, EMC Insurance (collectively EMC), appeal from a decision of the Workers' Compensation Court refusing to dismiss Chad A. Hofferber's petition for benefits under the Nebraska Workers' Compensation Act (the Act).[1] The primary issues presented in this appeal relate to the scope of the Workers' Compensation Court's authority to modify, suspend, or terminate a claimant's right to benefits as punishment for the claimant's uncooperative or contemptuous conduct.

I. BACKGROUND

On October 3, 2000, Hofferber was injured in an accident in Adams County, Nebraska, arising out of and in the course of his employment with Hastings Utilities. On March 7, 2002, Hofferber filed a petition in the Workers' Compensation Court alleging that he had stepped on a manhole cover and sustained injuries to "his left foot and left side and urological injuries; abdominal injuries and severe and profound emotional injuries."[2] On April 17, 2003, the parties filed a stipulation and joint motion to dismiss, in which they agreed that Hofferber had sustained compensable injuries and was entitled to temporary total disability benefits and reasonable and necessary medical expenses. The court dismissed the cause without prejudice.

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[1] Neb. Rev. Stat. §§ 48-101 to 48-1,117 (Reissue 2010).

[2] See, generally, *Hofferber v. City of Hastings*, 275 Neb. 503, 747 N.W.2d 389 (2008).

Hofferber had been evaluated at the Mayo Clinic in Minnesota after his accident, where it had been recommended that he see a particular surgical specialist in Boston, Massachusetts. The surgeon concluded, after examining Hofferber, that he was a candidate for revascularization surgery. Hofferber had the surgery in December 2003, and it was successful, but Hofferber still suffered from chronic pain, which the surgeon diagnosed as neuropathic. The surgeon treated the condition with steroids and recommended that Hofferber follow up with a pain management program closer to home.

Hofferber asked that he be sent back to the Mayo Clinic for pain management. A program at the University of Nebraska Medical Center had also been considered, but Hofferber reported having had a bad experience there shortly after his accident. After some missed appointments due to illness, Hofferber was reevaluated at the Mayo Clinic on March 14, 2005. After several different treatment options were discussed, including a pelvic CT scan, Hofferber's physician at the Mayo Clinic ultimately recommended another steroid injection and approved Hofferber to begin a 3-week Mayo Clinic pain rehabilitation program.

But Hofferber failed to schedule the injection, expressing concern about getting an injection from the Mayo Clinic instead of his surgeon. Hofferber's surgeon had apparently suggested that another physician might not be comfortable performing an injection in close proximity to the site of the revascularization surgery. When an appointment at the Mayo Clinic was scheduled for Hofferber in October 2005, he notified his medical case manager that he could not keep the appointment because of an infection. Hofferber also expressed his concern about the injection and asked what had happened to the recommendation of a CT scan.

At this point, concerned about Hofferber's periodic difficulty in keeping appointments at the Mayo Clinic and with his surgeon, EMC requested a signed medical release form to obtain medical records substantiating Hofferber's reasons for not keeping his Mayo Clinic appointment. EMC stopped Hofferber's weekly benefit payments until the signed release was provided. The evidence also suggests that Hofferber had

stopped his psychiatric treatment in 2003, although it is not clear whether EMC might have stopped funding it.

In addition to the recommended Mayo Clinic treatment, Hofferber's surgeon wanted to see Hofferber for an annual followup appointment, which EMC authorized. Hofferber did not pursue either opportunity, although EMC encouraged him to do so despite Hofferber's continuing refusal to provide EMC with a release.

On December 20, 2006, Hofferber filed a pro se petition in the Workers' Compensation Court, alleging that he was owed past-due benefits and penalties, unpaid medical and legal expenses, vocational rehabilitation, and future medical treatment. EMC propounded interrogatories and requests for production, seeking, as relevant, information about Hofferber's medical treatment and any outstanding medical bills. But in a telephone conversation on February 7, 2007, Hofferber told EMC's counsel that he would not answer those discovery requests. According to EMC's counsel, Hofferber also said he would not submit to a deposition. Hofferber did not reply to EMC's discovery requests and called EMC's counsel and left a profane voice mail message.

During the same time period, Hofferber's medical case manager repeatedly contacted Hofferber on EMC's behalf, offering to assist Hofferber in arranging resumption of medical treatment. In response, Hofferber left profane voice mail messages for his case manager.

On March 20, 2007, EMC filed a motion to compel Hofferber to respond to its interrogatories and requests for production, appear for a scheduled deposition, and avail himself of the medical treatment furnished by EMC. A hearing was held before a trial court of the Workers' Compensation Court, at which Hofferber appeared and complained about EMC's refusal to pay his benefits. Hofferber also suggested that EMC had refused to pay medical bills. It appears from the statements of counsel that there may have been disagreement about whether some medical expenses, such as those relating to illnesses and infections, were causally related to Hofferber's compensable injury, although it is unclear because the disputed bills are not in the record.

EMC's counsel explained that EMC was willing to pay for any expenses that were the result of the accident, but that part of the reason for its discovery requests was to obtain information about those expenses. And Hofferber was told that if he resumed his recommended medical treatment, his disability benefits would be resumed.

The trial court directed Hofferber from the bench to comply with EMC's discovery requests. The court also entered an April 2, 2007, written order directing Hofferber to avail himself of the medical treatment being offered. On April 26, EMC filed a motion to dismiss Hofferber's petition, alleging that he had failed to respond to its discovery requests.

On June 1, 2007, counsel entered an appearance on Hofferber's behalf, and EMC's motion to dismiss was set for a hearing before the trial court on June 27. But the hearing was delayed several times, for reasons that are not apparent from the record. The hearing had been scheduled for December 19 when, on November 19, Hofferber's counsel filed a motion to withdraw, alleging that communications with Hofferber had broken down and that Hofferber wanted counsel fired. EMC's counsel e-mailed Hofferber to inform him of the hearing on the motion to withdraw, and Hofferber sent a profane reply.

In the meantime, after another missed appointment, Hofferber had returned to the Mayo Clinic in June and July 2007. Recommendations on Hofferber's pain management were deferred until his recurring infections could be resolved. Followup appointments were scheduled for September, but were canceled when Hofferber was unable to make travel arrangements in time. Hofferber also failed to make a scheduled trip to follow up with his surgeon. Hofferber had been asked by the Mayo Clinic to get bacterial cultures of his infections, but did not do so. Hofferber made one return visit to the Mayo Clinic in September, but did not see most of the doctors there with whom consultation had been recommended. In December, EMC decided not to send Hofferber any more advance payments for travel expenses. In January 2008, a certified letter to Hofferber from his medical case manager, offering to schedule a pain rehabilitation program, was returned unopened, marked "Refused."

On January 29, 2008, EMC filed an amended motion to dismiss, which came on for hearing before the trial court on February 6. Hofferber did not appear, despite several attempts by the court and counsel to reach him. EMC argued at the hearing that Hofferber was not making any medical progress because he was not following up with scheduled appointments. EMC also noted that Hofferber either had "inappropriate conduct and vulgar communications" with EMC's counsel and his case manager, or refused to communicate at all.

Although it is not entirely clear from the record, counsel's argument at the hearing seems to suggest that EMC may have resumed payment of Hofferber's temporary total disability benefits. A letter from Hofferber's surgeon was also submitted, suggesting that Hofferber's other medical problems were interfering with his being seen by the surgeon. And the record suggests that Hofferber had complied with EMC's discovery requests to some extent, although EMC complained that some of the material provided was unclear and could not be clarified because Hofferber refused to communicate with counsel.

EMC contended that Hofferber had not complied with the court's orders to return to medical treatment or comply with discovery, so the matter should simply be dismissed. In a written order filed February 29, 2008, the trial court found that the conduct of EMC's counsel and Hofferber's case manager had been reasonable and that Hofferber's conduct had been unacceptable. But the court declined to dismiss the case. Instead, the court ordered Hofferber to refrain from any abusive communications with EMC's counsel, his medical case manager, or other employees of EMC. The court ordered Hofferber to take whatever steps were necessary to enroll in the Mayo Clinic pain rehabilitation program. EMC's counsel was ordered to report any abusive conduct by Hofferber, and EMC was ordered to continue paying indemnity benefits.

EMC notified Hofferber's medical case manager of the court's order, so Hofferber's case manager e-mailed him offering to assist in coordinating his care. Hofferber sent two replies within a few minutes of one another; the first told the case manager to stop e-mailing him, and the second was profane.

On March 12, 2008, EMC filed a request for a show cause hearing based on Hofferber's violation of the February 29 order. EMC asked the court to dismiss Hofferber's pending petition with prejudice and terminate all of Hofferber's benefits, including indemnity and medical care. The trial court, acting sua sponte, transferred venue to Omaha, Nebraska, and scheduled the show cause hearing at the Douglas County Courthouse. The record suggests that this was done out of security concerns, because security at the Douglas County Courthouse was more stringent than security at the State Capitol in Lincoln, Nebraska.

Notice of the hearing was served on Hofferber, but he did not appear or contact the court. The trial court found that Hofferber had violated the February 29, 2008, order by sending abusive e-mails to his medical case manager and unreasonably refusing to avail himself of the medical care that had been provided. In an order filed March 28, 2008, the court determined that

> [t]he remedy given to this Court for contempt and for unreasonably refusing to cooperate by [Hofferber] is to terminate benefits and dismiss [Hofferber's] petition. It is therefore, the finding of this Court that [EMC's] responsibility under the . . . Act for payments for indemnity benefits or medical care should be terminated, and [Hofferber's] Petition filed in this court on December 20, 2006, should be dismissed.

A year passed. On April 9, 2009, the Adams County Court appointed a guardian and conservator for Hofferber, having found clear and convincing evidence that Hofferber was an incapacitated person who lacked "sufficient understanding or capacity to make or communicate responsible decisions concerning himself, including those decisions concerning his own health, safety and financial needs."[3] On September 10, Hofferber, through his guardian and conservator, filed a "Further Petition" in the Workers' Compensation Court, seeking reinstatement of his benefits. The petition alleged that Hofferber remained temporarily and totally disabled, that he had resumed medical treatment for his work-related injuries, and that his guardian

[3] See Neb. Rev. Stat. § 30-2601 (Reissue 2008).

and conservator could give the consent or approval necessary to facilitate further medical care.

EMC filed a motion to dismiss the "Further Petition," alleging that the trial court's March 28, 2008, order terminating Hofferber's benefits was final and that the Workers' Compensation Court lacked jurisdiction over Hofferber's request for further benefits. In response, Hofferber argued that the March 28 order was void because the hearing had been held in Douglas County instead of "the county in which the accident occurred," as required by § 48-177. Hofferber also argued that the March 28 order did not specifically say that the dismissal of Hofferber's petition was "with prejudice," so a further petition was permitted, and that the Act only permits suspension of benefits as a sanction, not a final order extinguishing a claim.

On January 20, 2010, the trial court entered an order vacating the March 28, 2008, order. The court agreed with Hofferber that venue for the hearing that resulted in the March 28 order had been improper. The court reasoned that because Hofferber did not appear for the hearing or take part in it, he could not be said to have waived any objection to venue. So, the court concluded, the March 28 order was a nullity and the motion to show cause originally filed by EMC on March 12 remained pending for disposition.

EMC appealed to a review panel, which found that the trial court had erred in concluding that venue for the March 28, 2008, hearing was improper. The review panel held that § 48-177 applied only to a trial on the merits, not each and every hearing the Workers' Compensation Court might be required to hold in every case. And the review panel found that the trial court had appropriately exercised its inherent power in transferring venue to Douglas County due to Hofferber's abusive behavior.

But the review panel also found that the trial court did not have authority under the Act to terminate Hofferber's right to future benefits. The review panel found no authority for a trial judge of the Workers' Compensation Court to vacate a prior order and held that although the Workers' Compensation Court has the inherent power to punish for contempt of court,

the Workers' Compensation Court cannot dismiss a claim with prejudice in order to punish contemptuous behavior. The review panel noted that the March 28, 2008, order did not specify that Hofferber's petition had been dismissed "with prejudice" and found that to the extent the order could be read as dismissing future liability, the trial court lacked authority to enter it.

Based on that reasoning, the review panel affirmed the trial court's overruling of EMC's motion to dismiss Hofferber's petition. EMC appeals, and Hofferber cross-appeals.

II. ASSIGNMENTS OF ERROR

EMC assigns, as consolidated and restated, that the review panel erred in (1) determining that the trial court lacked authority to terminate its obligation to pay further benefits, (2) vacating the trial court's March 28, 2008, order, and (3) failing to find that the trial court lacked jurisdiction over Hofferber's "Further Petition."

Hofferber assigns, as consolidated and restated, that the review panel erred in concluding the trial court's March 28, 2008, order was not void for lack of jurisdictional venue.

III. STANDARD OF REVIEW

[1] A judgment, order, or award of the Workers' 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.[4]

IV. ANALYSIS

1. Venue

[2] Before addressing EMC's appeal, we address Hofferber's cross-appeal, because (at least according to Hofferber) it implicates jurisdictional issues. Before reaching the legal issues presented for review, it is the duty of an appellate court to settle

[4] § 48-185.

jurisdictional issues presented by a case.[5] Hofferber relies on § 48-177, which provides in relevant part that when a petition or motion is filed in the Workers' Compensation Court, a judge of the court will be assigned to hear the cause

> in the county in which the accident occurred, except [that a case to be tried in a county with a population of 4,000 or less and without adequate facilities may be tried in any adjoining county,[6]] and except that, upon the written stipulation of the parties, filed with the compensation court at least fourteen days before the date of hearing, the cause may be heard in any other county in the state.

Hofferber contends that pursuant to § 48-177, because his accident occurred in Adams County, Douglas County was an improper venue for the hearing on EMC's motion to dismiss and, therefore, the court lacked jurisdiction to rule on the motion. But the issue raised by Hofferber is not jurisdictional.

[3-7] "Jurisdiction" and "venue" are not synonymous and interchangeable functions in litigation.[7] Jurisdiction is the inherent power or authority to decide a case.[8] Venue, however, is the place of trial of an action—the site where the power to adjudicate is to be exercised.[9] Venue is ordinarily not jurisdictional.[10] Unlike jurisdiction, venue is a personal privilege which, if not raised by a party, is waived unless prohibited by law.[11] That is important here because no objection was made to the Douglas County hearing, nor was any appeal taken from the ruling on the order. If § 48-177 related to jurisdiction, Hofferber might

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[5] *Wright v. Omaha Pub. Sch. Dist.*, 280 Neb. 941, 791 N.W.2d 760 (2010).

[6] See Neb. Rev. Stat. § 25-412.02 (Reissue 2008).

[7] *Blitzkie v. State*, 228 Neb. 409, 422 N.W.2d 773 (1988). See, also, *Anderson v. Houston*, 274 Neb. 916, 744 N.W.2d 410 (2008).

[8] See, *In re Interest of Adams*, 230 Neb. 109, 430 N.W.2d 295 (1988); *Blitzkie, supra* note 7.

[9] See *id.*

[10] *Blitzkie, supra* note 7.

[11] *In re Interest of Adams, supra* note 8. See, also, *Anderson, supra* note 7; *Krajicek v. Gale*, 267 Neb. 623, 677 N.W.2d 488 (2004); *Blitzkie, supra* note 7.

be able to collaterally attack the resulting order as void.[12] But if § 48-177 is simply a venue statute, then the order is not void, and not subject to collateral attack on that basis.[13]

[8] And § 48-177 is clearly a venue statute. In *In re Interest of Adams*,[14] we addressed a similar argument in the context of a statute which provided that a petition for the commitment of a mentally ill dangerous person should be filed with the clerk of the district court where the person is found, except that a district judge of that court could authorize the petition to be filed in another judicial district if there was good cause to do so. We reasoned that the statute could not be jurisdictional, because if it was, then the procedure permitting the cause to be transferred to another district would be tantamount to conferring jurisdiction on another tribunal which lacked it.[15] And, we noted, litigants cannot confer jurisdiction on a judicial tribunal by acquiescence or consent.[16] So, we concluded that the statute at issue was a venue statute and was not jurisdictional.[17]

[9] The same reasoning applies here. By its terms, § 48-177 permits a workers' compensation claim to be tried in another county if the facilities are inadequate in the county of the accident or merely by the stipulation of the parties. And litigants cannot confer subject matter jurisdiction upon a tribunal by acquiescence or consent.[18] Section 48-177, therefore, cannot be jurisdictional; it simply specifies the venue for hearing the cause, which is an objection that can be waived.[19]

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[12] See *Hunt v. Trackwell*, 262 Neb. 688, 635 N.W.2d 106 (2001).

[13] See *Lewin v. Lewin*, 174 Neb. 596, 119 N.W.2d 96 (1962).

[14] *In re Interest of Adams, supra* note 8.

[15] See *id.*

[16] See *id.*

[17] See *id.* See, also, *Anderson, supra* note 7; *Blitzkie, supra* note 7; *McCall v. Hamilton County Farmers Telephone Ass'n*, 135 Neb. 70, 280 N.W. 254 (1938).

[18] *Honda Cars of Bellevue v. American Honda Motor Co.*, 261 Neb. 923, 628 N.W.2d 661 (2001); *In re Interest of Adams, supra* note 8.

[19] See *McCall, supra* note 17.

Hofferber relies on *Gracey v. Zwonechek*,[20] in which we held that a provision of the Nebraska Rules of the Road[21] requiring administrative license revocations to be heard "'in the county in which the arrest occurred or in any other county agreed to by the parties'" had been violated by a videoconference and teleconference held by hearing officers located in Lancaster County instead of the counties of the arrests.[22] We recognize how *Gracey* might be pertinent, and even persuasive, if we were addressing the merits of Hofferber's claim that venue was improper. But we are addressing whether Hofferber preserved that claim, and on that point, *Gracey* is plainly distinguishable, because in *Gracey*, the appellants objected to venue at their hearings and appealed from the resulting orders. In fact, we noted in *Gracey* that

> [t]he argument made by the appellants has been raised before this court on several prior occasions; however, we have not yet had the opportunity to address it. In *Muir v. Nebraska Dept. of Motor Vehicles*,[23] we held that § 60-6,205(6)(a) is a venue statute and that generalized objections to the method by which the hearing was being conducted were not proper objections to venue. . . . In both *Davis*[24] and *Reiter*,[25] we did not reach the substantive merits of the defendants' arguments because the defendants failed to properly object to the venue of their hearings and because their subsequent participation in the hearings acted as a waiver of any objection they may have had.[26]

But we found that in *Gracey*, the appellants had properly raised the issue, so we addressed it on the merits.

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[20] *Gracey v. Zwonechek*, 263 Neb. 796, 643 N.W.2d 381 (2002).

[21] See Neb. Rev. Stat. §§ 60-601 to 60-6,379 (Reissue 2010).

[22] *Gracey, supra* note 20, 263 Neb. at 799, 643 N.W.2d at 384.

[23] *Muir v. Nebraska Dept. of Motor Vehicles*, 260 Neb. 450, 618 N.W.2d 444 (2000).

[24] *Davis v. Wimes*, 263 Neb. 504, 641 N.W.2d 37 (2002).

[25] *Reiter v. Wimes*, 263 Neb. 277, 640 N.W.2d 19 (2002).

[26] *Gracey, supra* note 20, 263 Neb. at 799, 643 N.W.2d at 384.

In this case, obviously, Hofferber had notice of the Douglas County hearing, but did not object to its venue. We need not determine if his failure to appear or participate was a "waiver" of the issue, because no appeal was taken from the resulting order, so the only relevant question is whether the order was void for lack of jurisdiction. It was not. Because the court was not deprived of jurisdiction by the venue, and no appeal was taken, the order was a final adjudication not subject to Hofferber's collateral attack.[27] Because § 48-177 is a venue statute that relates to procedure and not jurisdiction, the fact that the cause was tried in a county other than that declared by § 48-177 does not go to jurisdiction so as to invalidate the judgment.[28] The court had jurisdiction over the matter and the power to render a judgment binding on the parties.[29]

Therefore, we find that the trial court erred in concluding that the March 28, 2008, order was "a nullity." It may have been entered in error, but it was entered by a court with jurisdiction to enter it, and no appeal was taken. Nor did the court have the authority to vacate its own judgment,[30] although we note that trial judges of the Workers' Compensation Court were recently given the authority to substantively modify or change their rulings within 14 days of entry.[31] We need not, and do not, address whether the review panel's restrictive interpretation of § 48-177 was correct, and we note that pursuant to L.B. 151, § 9, that issue would be one of last impression. Although we do not endorse the review panel's reasoning, we agree with the review panel's ultimate conclusion that the trial court erred in vacating the March 28 order. And, therefore, we find no merit to Hofferber's assignment of error on cross-appeal.

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[27] See *Lewin, supra* note 13. See, also, §§ 48-170 and 48-178.

[28] See, *id.*; 77 Am. Jur. 2d *Venue* § 45 (2006), citing *United States v. Hvoslef*, 237 U.S. 1, 35 S. Ct. 459, 59 L. Ed. 813 (1915).

[29] See *id.*

[30] See, *Dougherty v. Swift-Eckrich*, 251 Neb. 333, 557 N.W.2d 31 (1996); *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007).

[31] See 2011 Neb. Laws, L.B. 151, § 11.

2. Authority to Terminate Benefits

[10] Generally, EMC argues that the review panel erred in concluding that its motion to dismiss should be overruled. EMC contends the March 28, 2008, order was final and that it conclusively terminated Hofferber's right to any benefits resulting from his accident. Hofferber, on the other hand, relies upon the familiar proposition that the Workers' Compensation Court, as a statutorily created court, has only such authority as has been conferred upon it by statute, and its power cannot extend beyond that expressed in the statute.[32] Hofferber contends, among other things, that the Act did not afford the trial court authority to dismiss his petition with prejudice.

Whether the trial court had such authority, however, depends to great extent on the underlying basis for terminating Hofferber's benefits. In this case, at issue were Hofferber's alleged failure to comply with discovery requests, his failure to avail himself of provided medical treatment, and his violation of the court's order to refrain from abusive conduct. We examine each in turn.

(a) Discovery Requests

We note, at the outset, that Hofferber's alleged failure to cooperate with EMC's discovery requests did not ultimately play a role in the dismissal of his petition. As noted above, the record suggests that Hofferber eventually did comply with EMC's discovery requests to some extent and the trial court's March 28, 2008, order did not find a discovery violation as a basis for dismissing Hofferber's petition. But examining the court's authority to enforce discovery provides a useful contrast to its enforcement authority in other respects, so it merits a brief examination regardless.

The Workers' Compensation Court's authority to enforce compliance with reasonable discovery is as broad as that of any trial court in Nebraska, which can include dismissing a petition.[33] In the examination of any witness and in requiring

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[32] See, *Burnham v. Pacesetter Corp.*, 280 Neb. 707, 789 N.W.2d 913 (2010); *Dougherty, supra* note 30; § 48-179.

[33] See, *Behrens v. Blunk*, 280 Neb. 984, 792 N.W.2d 159 (2010); *Greenwalt v. Wal-Mart Stores*, 253 Neb. 32, 567 N.W.2d 560 (1997).

the production of books, papers, and other evidence, the compensation court has all the powers of a judge, magistrate, or other officer in the taking of depositions or the examination of witnesses, including the power to enforce orders by commitment for refusal to answer or for the disobedience of any such order.[34] And pursuant to the Workers' Compensation Court's rulemaking authority,[35] it has adopted the Nebraska Rules of Discovery in Civil Cases,[36] which permit the court to sanction noncompliance with a discovery order by, among other things, dismissing the action or rendering a default judgment.[37]

But, as noted above, the trial court did not find noncompliance with discovery in its March 28, 2008, order, nor would the record seem to support such a finding. Instead, the court relied on Hofferber's failure to avail himself of medical treatment and noncompliance with its order to refrain from abusive conduct.

(b) Failure to Cooperate With Medical Treatment

Compared to its power to enforce discovery, the compensation court's authority to deal with a worker's failure to cooperate with medical treatment (or vocational rehabilitation) is constrained. The Act provides that a worker who unreasonably refuses to cooperate with an employer's medical examination may be deprived of benefits during the continuance of such refusal.[38] But that provision is not at issue here. Instead, EMC relies upon § 48-162.01(7), which provides in relevant part that if an injured employee, without reasonable cause,

> refuses to undertake or fails to cooperate with a physical, medical, or vocational rehabilitation program determined by the compensation court or judge thereof to be suitable for him or her . . . the compensation court or judge

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[34] § 48-162(1).

[35] See § 48-163(1).

[36] See Workers' Comp. Ct. R. of Proc. 4 (2009).

[37] Neb. Ct. R. Disc. § 6-337(b)(2)(C).

[38] See, § 48-134; *Hale v. Vickers, Inc.*, 10 Neb. App. 627, 635 N.W.2d 458 (2001).

> thereof may suspend, reduce, or limit the compensation otherwise payable under the . . . Act.

That language, however, does not expressly provide that the court has the authority to permanently terminate an injured employee's right to benefits under the Act. Instead, § 48-162.01(7) should be read in pari materia with the effectively identical language of § 48-120(2)(c), which provides that "the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the . . . Act" when an "injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer," so that "the employer is not liable for an aggravation of such injury due to such refusal and neglect." The obvious intent of this provision is to make sure that an employer is not liable for extra benefits when an employee's conduct makes his or her condition worse.[39]

[11] Section 48-162.01(7) reflects the same principle, except it applies when an employee's conduct prevents his or her condition from improving. It is apparent that § 48-162.01(7) is intended to prevent an employee's refusal to improve his or her medical condition or earning capacity from causing an employer to pay more workers' compensation benefits than it should. In other words, the relevant language of §§ 48-120(2)(c) and 48-162.01(7) is intended to be remedial, not punitive—it is intended not to punish a worker for being uncooperative, but simply to make sure that the consequences of a worker's failure to cooperate are not unfairly borne by an employer.

So, for instance, in *Lowe v. Drivers Mgmt., Inc.*,[40] we rejected an employer's argument that an employee's refusal to participate in vocational rehabilitation warranted a reduction in the employee's benefits following a modification proceeding, because the employer had not presented evidence that had the employee participated in vocational rehabilitation, it would have prevented him from becoming permanently totally disabled. We reasoned that the employer had, among other things,

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[39] See *Yarns v. Leon Plastics, Inc.*, 237 Neb. 132, 464 N.W.2d 801 (1991).

[40] *Lowe v. Drivers Mgmt., Inc.*, 274 Neb. 732, 743 N.W.2d 82 (2007).

failed to demonstrate that "had [the employee] participated in the court-ordered job placement services, he would have been employed at the time of the modification hearing."[41] Thus, we concluded that the employer "did not offer evidence upon which a trial judge should 'suspend, reduce, or limit the compensation otherwise payable'" pursuant to § 48-162.01(7).[42] The evidence that the employer *should* have presented was evidence that the employee's condition would have been different had he availed himself of the benefits he had been offered.

[12,13] In other words, given the purpose of the statute, and the general rule that the Act should be construed to accomplish its beneficent purposes,[43] § 48-162.01(7) can only be read to authorize the complete termination of a claimant's right to benefits under the Act if evidence is presented to support a finding that had the employee availed himself or herself of the benefits offered, the employee would no longer be disabled. The statute cannot be used solely to punish or coerce an injured worker. There must be evidence to support a finding that the worker's disability would have been reduced had the worker cooperated with medical treatment or vocational rehabilitation.

When that principle is applied in this case, it is evident that such a finding was not made. No evidence was presented that would have supported such a finding, nor was it even argued that Hofferber's disability would have been reduced had he participated in medical treatment. (While that might seem logical, it is uncertain given the severity of Hofferber's injuries, and a court cannot speculate as to what might have been in the absence of any evidence to that effect.[44]) Instead, it appears that EMC was urging the court to use § 48-162.01(7) coercively, to either compel Hofferber to accept treatment or relieve EMC of the burden of dealing with him. But that purpose is not authorized by § 48-162.01(7).

[14] We note, as did the review panel, that the trial court's order did not explicitly state that Hofferber's petition for

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[41] *Id.* at 741-42, 743 N.W.2d at 91.

[42] *Id.* at 742, 743 N.W.2d at 91.

[43] See *Burns v. Nielsen*, 273 Neb. 724, 732 N.W.2d 640 (2007).

[44] See *Lowe, supra* note 40.

benefits was to be terminated with prejudice, and like the review panel, we are reluctant to read such a serious consequence into language that does not clearly express it. We presume in a bench trial that the judge was familiar with and applied the proper rules of law unless it clearly appears otherwise.[45] So, given our conclusion that dismissal with prejudice would have been unwarranted on the arguments and evidence presented, we must assume that the court acted within its authority and did not intend to permanently terminate Hofferber's right to receive benefits. We agree with the review panel that the trial court's order did not dismiss Hofferber's petition with prejudice based on his failure to obtain medical treatment and that even if it had, the dismissal would have been beyond the court's authority.

EMC also relies on another provision of § 48-162.01(7), which states that the compensation 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." EMC seizes upon the phrase "as otherwise required in the interest of justice" and contends that the court could and did dismiss Hofferber's petition with prejudice because justice required it.

We find no merit to EMC's reading of the statute. The language relied upon by EMC was enacted in response to this court's decision in *Dougherty v. Swift-Eckrich*,[46] in which we held that the Workers' Compensation Court did not have authority to extend the completion date that its original award had specified for a worker's vocational rehabilitation. We had reasoned that the original award had become final and that the Act did not authorize the court to correct an error in the original award.[47] In response, the Legislature amended § 48-162.01(7) to permit the Workers' Compensation Court to

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[45] *Bauermeister v. McReynolds*, 253 Neb. 554, 571 N.W.2d 79 (1997).

[46] *Dougherty, supra* note 30.

[47] See *id.*

modify previously awarded physical, medical, or vocational rehabilitation services.[48]

[15] In other words, the provision at issue is simply intended to permit the compensation court to modify rehabilitation plans in response to changed circumstances following the entry of the initial plan.[49] The statute cannot be read, in light of the more specific provisions of §§ 48-120(2)(c) and 48-162.01(7), to apply to situations in which a worker has refused to cooperate with treatment or rehabilitation. And even if it could be read to apply to such situations, it only permits the court to modify previously entered awards—not to preclude benefits from being sought or awarded in the future.[50]

In short, § 48-162.01(7) provides no basis for EMC's argument that Hofferber's "Further Petition" was barred.

(c) Contempt of Court

Finally, we turn to the Workers' Compensation Court's authority to hold a party in contempt. Hofferber relies on our decision in *Burnham v. Pacesetter Corp.*[51] for the proposition that the Workers' Compensation Court does not have authority to hold a party in contempt.

We concede that *Burnham* provides some support for Hofferber's argument. In *Burnham*, the claimant was attempting to collect unpaid benefits and argued that the Workers' Compensation Court had the authority to enforce a judgment it had entered against his employer and insurer to compel them to pay him and hold them in contempt for failing to follow that order. But we agreed with the compensation court that the claimant's remedy was in district court, finding that the compensation court did not have authority to enforce the collection of its award or "to issue contempt citations."[52] We reasoned

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[48] See, 1997 Neb. Laws, L.B. 128, § 4; Business and Labor Committee, 95th Leg., 1st Sess. (Jan. 27, 1997); *McKay, supra* note 30.

[49] See *McKay, supra* note 30.

[50] See *id.*

[51] See *Burnham, supra* note 32.

[52] *Id.* at 711, 789 N.W.2d at 916.

that the court did not have inherent authority to remedy violations of its orders, including finding a party in contempt, and that the Act did not vest the court with the authority to issue contempt orders.[53]

And we were correct on both of those points: the Act does not vest the court with contempt authority, nor does it have inherent contempt authority. But in *Burnham*, we did not discuss Neb. Rev. Stat. § 25-2121 (Reissue 2008), which provides that "[e]very court of record shall have power to punish by fine and imprisonment . . . persons guilty of" contemptuous conduct. And in *Bituminous Casualty Corp. v. Deyle*,[54] we explained at length, in the context of the Uniform Declaratory Judgments Act,[55] that the Workers' Compensation Court is a "'court of record.'"

In particular, we noted that

> "[t]he old definition of a court of record given by Blackstone is 'that where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the record of the court and are of such high and supereminent authority that their truth is not to be called in question.'"[56]

We also noted that a "'court of record'" is one whose proceedings are perpetuated in writing, duly recorded by some authorized person. So, we held that "a court which is required by law to keep a permanent and written memorialization of determinations made in proceedings brought to obtain a judicial resolution of a question is a 'court of record.'"[57]

Applying that holding, we noted that the Workers' Compensation Court is charged by statute with keeping a full and true record of its proceedings[58] and that the clerk of the

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[53] See *Burnham, supra* note 32.

[54] *Bituminous Casualty Corp. v. Deyle*, 234 Neb. 537, 549, 451 N.W.2d 910, 918 (1990).

[55] See Neb. Rev. Stat. §§ 25-21,149 to 25-21,164 (Reissue 2008).

[56] *Deyle, supra* note 54, 234 Neb. at 549, 451 N.W.2d at 918.

[57] *Id.*

[58] See § 48-167.

Workers' Compensation Court is charged with that duty.[59] So, we concluded that "the Nebraska Workers' Compensation Court is a 'court of record' and, as such, has the authority to enter a declaratory judgment pursuant to the Uniform Declaratory Judgments Act."[60]

There is no discernible basis for distinguishing § 25-2121. It is more accurate to read *Burnham* as addressing the Workers' Compensation Court's authority to enter orders in aid of execution, rather than general contempt citations under § 25-2121. But we need not resolve any possible inconsistency in this case, because even if § 25-2121 applies, it would not provide the Workers' Compensation Court with authority to dismiss an action, with or without prejudice, as a sanction for contempt.

As noted above, § 25-2121 permits a court of record to punish contempt "by fine and imprisonment." While a court of general jurisdiction may also sanction a contemnor by dismissing an action, that power is derived from a court's inherent authority to impose sanctions *in addition to* what is listed in § 25-2121.[61] And the Workers' Compensation Court does not have inherent contempt authority. So, even if § 25-2121 empowers the Workers' Compensation Court to punish contempt, the court could do so only by fine or imprisonment—not dismissal of a petition.

To summarize: While the compensation court can dismiss a petition based upon discovery violations, no such violations were found in this case. And the compensation court is not authorized to dismiss a petition as a sanction for a party's conduct either because an injured worker failed to cooperate with treatment or rehabilitation or as an exercise of contempt authority. So, neither of the grounds that actually were found in this case for the March 28, 2008, order dismissing Hofferber's petition would have empowered the compensation court to dismiss his petition with prejudice and bar him from reasserting a right to benefits.

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[59] See § 48-157.

[60] *Deyle, supra* note 54, 234 Neb. at 550, 451 N.W.2d at 918.

[61] See *Tyler v. Heywood*, 258 Neb. 901, 607 N.W.2d 186 (2000).

To the extent the Workers' Compensation Court has authority to foreclose an injured worker's right to benefits under the Act, that authority was not (and could not have been) appropriately exercised in this case. And as we understand EMC's arguments, all of its assignments of error rest on the premise that the court's March 28, 2008, order *could* and *did* dismiss Hofferber's petition with prejudice. We find no merit to that premise, so we correspondingly find no merit to EMC's assignments of error.

V. CONCLUSION

We find no merit to Hofferber's argument on cross-appeal that the trial court lacked jurisdiction to enter the March 28, 2008, order in an improper venue. But we also find no merit to EMC's arguments that the March 28 order effectively dismissed Hofferber's claim for benefits with prejudice. Therefore, we affirm the judgment of the review panel remanding the cause to the trial court for further proceedings.

AFFIRMED.

WRIGHT, J., not participating.