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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

trial judge, and this standard of review applies to the trial court's determinations regarding division of property, alimony, and attorney fees.

3. **Judgments: Words and Phrases.** An abuse of discretion occurs when the trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence.
4. **Judgments: Appeal and Error.** Under the general acceptance of benefits rule, an appellant may not voluntarily accept the benefits of part of a judgment in the appellant's favor and afterward prosecute an appeal or error proceeding from the part that is against the appellant.
5. **Divorce: Judgments: Waiver: Appeal and Error.** In a dissolution action, a spouse who accepts the benefits of a divorce judgment does not waive the right to appellate review under circumstances where the spouse's right to the benefits accepted is conceded by the other spouse, the spouse was entitled as a matter of right to the benefits accepted such that the outcome of the appeal could have no effect on the right to those benefits, or the benefits accepted are pursuant to a severable award which will not be subject to appellate review.
6. **Property Division.** The equitable division of property is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in Neb. Rev. Stat. § 42-365 (Reissue 2008).
7. ____. Although the division of property is not subject to a precise mathematical formula, the general rule is to award a spouse one-third to one-half of the marital estate, the polestar being fairness and reasonableness as determined by the facts of each case.
8. ____. The purpose of a property division is to distribute the marital assets equitably between the parties.
9. **Parties: Appeal and Error.** A party is not entitled to prosecute error upon that which was made with his or her consent.
10. **Alimony.** In awarding alimony, a court should consider, in addition to the specific criteria listed in Neb. Rev. Stat. § 42-365 (Reissue 2008), the income and earning capacity of each party as well as the general equities of each situation.
11. ____. Disparity in income or potential income may partially justify an award of alimony.
12. **Attorney Fees: Appeal and Error.** An award of attorney fees is discretionary and will not be disturbed on appeal absent an abuse of discretion.
13. **Attorney Fees.** The award of attorney fees depends on multiple factors that include the nature of the case, the services performed and results obtained, the earning capacity of the parties, the length of time required for preparation and presentation of the case, customary charges of the bar, and the general equities of the case.
14. **Divorce: Attorney Fees.** Customarily in dissolution cases, attorney fees and costs are awarded only to prevailing parties or assessed against those who file frivolous suits.

Appeal from the District Court for Sarpy County: WILLIAM B. ZASTERA, Judge. Affirmed.

John J. Heieck and Matthew Stuart Higgins, of Higgins Law, for appellant.

LaLinda Finley-Swanson, pro se.

IRWIN, SIEVERS, and PIRTLE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Jeffrey B. Swanson appeals, and LaLinda Finley-Swanson cross-appeals, from a decree of dissolution entered by the district court, which decree dissolved the parties' marriage, divided the marital assets and debts, awarded LaLinda custody of the parties' minor child, and ordered Jeffrey to pay child support and alimony. On appeal, Jeffrey asserts that the district court erred in its division of the marital property. On cross-appeal, LaLinda asserts that the court erred in its valuation of one of Jeffrey's retirement accounts, in awarding her too little alimony, and in failing to order Jeffrey to pay her attorney fees. For the reasons set forth herein, we affirm the decision of the district court in its entirety.

II. BACKGROUND

Jeffrey and LaLinda were originally married on February 13, 1993. In February 2000, a decree of dissolution was entered dissolving that marriage. Jeffrey and LaLinda were remarried on July 1, 2000. The dissolution of this second marriage is the subject of the current appeal.

The parties have one child together who was born in September 1992. This child remained a minor throughout these dissolution proceedings.

Jeffrey is employed with Hawkins Construction Company (Hawkins Construction) and has been employed there for the duration of the parties' second marriage. He is the family's primary financial provider.

LaLinda has been employed periodically during the marriage. Recently, her ability to engage in gainful employment has been affected by an injury she suffered in July 2009. The injury has required her to undergo multiple surgeries to her hip, including a hip replacement, and she continues to

experience pain. Despite her health problems, LaLinda is currently employed full time as a "recovery specialist." There is some indication, however, that her current full-time position may not be permanent in nature due to some reorganization within her current company.

On March 3, 2010, LaLinda filed a complaint for dissolution of marriage. LaLinda specifically asked that the parties' marriage be dissolved, that their marital assets and debts be equitably divided, and that Jeffrey be ordered to pay alimony and attorney fees.

On May 24, 2010, Jeffrey filed an answer and cross-complaint for dissolution of marriage. In his cross-complaint, Jeffrey specifically asked that the parties' marriage be dissolved and that their marital assets and debts be equitably divided. In addition, he requested the court to find that an award of alimony and attorney fees to LaLinda was not warranted.

In May 2011, trial was held. At trial, both parties testified concerning their employment histories, their current financial circumstances, and their marital assets and debts. In addition, LaLinda testified about her hip injury and her current physical health. We will provide a more detailed recitation of the testimony of the parties and of the other evidence presented at the trial as necessary in our analysis below.

After the trial, the district court entered a decree of dissolution. The court divided the parties' marital assets and debts, awarded LaLinda alimony in the amount of $1,000 per month for a period of 36 months, and ordered each party to pay his or her own attorney fees.

Jeffrey appeals, and LaLinda cross-appeals.

III. ASSIGNMENTS OF ERROR

On appeal, Jeffrey assigns one error. He asserts that the district court erred in its division of the parties' marital property. Specifically, he argues that the district court awarded him an insufficient portion of the net marital estate.

On cross-appeal, LaLinda assigns four errors. Restated and renumbered, LaLinda's first three assigned errors allege that the district court erred in its valuation of one of Jeffrey's retirement accounts, in awarding her too little alimony, and in failing to order Jeffrey to pay her attorney fees.

[1] LaLinda's final assignment of error alleges, "The trial court erred by entering findings that show irregularity with the evidence that was admitted during the trial and the witnesses' testimony provided at trial during the lower trial court proceedings." This assigned error does not provide a clear indication of any specific error committed by the district court. 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. See *State ex rel. Wagner v. Gilbane Bldg. Co.*, 276 Neb. 686, 757 N.W.2d 194 (2008). Upon our review of LaLinda's brief on appeal, we are unable to find an argument that corresponds with this general assertion of error. Because LaLinda provided only a vague assertion of error and because such error was not both assigned and argued, we do not address this error further. See, *State ex rel. Wagner v. Gilbane Bldg. Co., supra*; *Amanda C. v. Case*, 275 Neb. 757, 749 N.W.2d 429 (2008) (stating that appellate court will not review errors that were not assigned and argued in party's brief).

We also note that in the argument section of LaLinda's brief, she asserts that the district court erred in failing to find that Jeffrey committed "fraud" when he refinanced the mortgage on the parties' marital home and when he purchased a new home after the entry of the decree. Brief for appellee at 16. LaLinda did not specifically assign as error these assertions. Accordingly, we decline to consider such assertions. *Shepherd v. Chambers*, 281 Neb. 57, 64, 794 N.W.2d 678, 683-84 (2011) ("errors argued but not assigned will not be considered on appeal").

IV. ANALYSIS

1. Standard of Review

[2] 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 trial judge, and this standard of review applies to the trial court's determinations regarding division of property, alimony, and attorney fees. See, *Millatmal v. Millatmal*, 272 Neb. 452, 723

N.W.2d 79 (2006); *Gress v. Gress*, 271 Neb. 122, 710 N.W.2d 318 (2006).

[3] An abuse of discretion occurs when the trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *Adams v. Adams*, 13 Neb. App. 276, 691 N.W.2d 541 (2005).

2. Jeffrey's Appeal

(a) Acceptance of Benefits

Before we address the merits of Jeffrey's assigned error on appeal, we must first address whether he waived his right to appeal from the decree of dissolution by accepting the benefits of the judgment. After Jeffrey filed his notice of appeal, LaLinda filed a motion to dismiss Jeffrey's appeal on the ground that he accepted certain benefits awarded to him in the decree. Specifically, she argues that he accepted his portion of the proceeds from the sale of the parties' marital home and the proceeds from his 2011 bonus from Hawkins Construction.

[4] Under the general acceptance of benefits rule, an appellant may not voluntarily accept the benefits of part of a judgment in the appellant's favor and afterward prosecute an appeal or error proceeding from the part that is against the appellant. See *Liming v. Liming*, 272 Neb. 534, 723 N.W.2d 89 (2006). However, there are several exceptions to the general rule.

[5] The Nebraska Supreme Court has previously held that in a dissolution action, a spouse who accepts the benefits of a divorce judgment does not waive the right to appellate review under circumstances where the spouse's right to the benefits accepted is conceded by the other spouse, the spouse was entitled as a matter of right to the benefits accepted such that the outcome of the appeal could have no effect on the right to those benefits, or the benefits accepted are pursuant to a severable award which will not be subject to appellate review. *Id*. The reason for these exceptions is that to preclude appeal by the acceptance of the benefits of a divorce judgment, the acceptance of benefits must be of such a nature as to clearly

indicate an intention to be bound by the divorce decree. *Id.* And, there must be unusual circumstances, demonstrating prejudice to the appellee, or a very clear intent to accept the judgment and waive the right to appeal, to keep an appellate court from reaching the merits of the appeal. *Id.*

LaLinda first argues that Jeffrey has waived his right to appellate review because he accepted his portion of the proceeds from the sale of the parties' marital home. We conclude that Jeffrey's acceptance of such funds did not waive his right to appellate review, because LaLinda conceded at trial that Jeffrey was entitled to the amount he received from the proceeds of the sale of the marital home.

In the decree, the district court awarded Jeffrey $11,000 as his portion of the proceeds from the sale of the marital home. The court directed LaLinda's attorney to issue a check in the amount of $11,000 to Jeffrey and his attorney within 7 days of the entry of the decree. LaLinda's attorney issued a check to Jeffrey, and Jeffrey filed with the district court a document he entitled "Receipt and Satisfaction" evidencing his acceptance of these funds. As such, it is clear that Jeffrey accepted a portion of the benefits awarded to him pursuant to the decree.

However, at trial, LaLinda conceded that Jeffrey was entitled to at least $11,000 from the proceeds of the sale of the home. In fact, in her proposed property distribution balance sheet which she offered as an exhibit to the court, she argued that Jeffrey should receive $11,071.51 from the proceeds of the sale. The court essentially accepted LaLinda's proposed distribution when it awarded Jeffrey $11,000.

Because LaLinda conceded that Jeffrey was entitled to $11,000 from the proceeds of the sale of the marital home, we conclude that his acceptance of these funds prior to his appeal did not waive his right to appellate review.

LaLinda next argues that Jeffrey has waived his right to appellate review because he accepted the proceeds from his 2011 bonus from Hawkins Construction. We conclude that Jeffrey's acceptance of such funds also did not waive his right to appellate review, because LaLinda does not assert on appeal that Jeffrey is not entitled to this money and because Jeffrey's

acceptance of the money is not inconsistent with his position on appeal.

In the decree, the district court awarded Jeffrey the remaining one-half interest in the 2011 bonus he received as a result of his employment with Hawkins Construction. The remaining funds totaled almost $21,000. Although there is no evidence in the record indicating that Jeffrey accepted these funds prior to filing his appeal, he conceded in his response to LaLinda's motion to dismiss his appeal that he had received and accepted the money.

We first note that LaLinda does not argue in her brief on cross-appeal that the court erred in awarding the funds from the 2011 bonus to Jeffrey. In fact, LaLinda does not contest the property division at all except to the extent the court valued one of the retirement accounts held by Jeffrey.

Moreover, we do not find that Jeffrey's acceptance of these funds is in any way inconsistent with his position on appeal that he did not receive a large enough percentage of the marital estate. His acceptance of a portion of an award that he argues is unsatisfactory and inadequate does not clearly indicate an intention to be bound by the divorce decree.

Accordingly, we conclude that Jeffrey's acceptance of the funds from his 2011 bonus did not waive his right to appellate review. And, having found that Jeffrey did not waive his right to appellate review by accepting certain benefits awarded to him pursuant to the decree, we now address the merits of Jeffrey's assigned error on appeal.

(b) Division of Marital Property

On appeal, Jeffrey argues that the district court erred in its distribution of the net marital estate between the parties. Specifically, he asserts that "[t]he issue on appeal is whether the trial court erred when it awarded 84% of the marital estate to [LaLinda], but only 16% thereof to [Jeffrey]." Brief for appellant at 13. Jeffrey goes on to assert that such a property division is necessarily an abuse of discretion, "[b]ecause the trial court's property distribution fell outside of the one-third to one-half range required in all marital property distribution cases . . . ." *Id*. Jeffrey requests this court to order LaLinda to

pay an equalization payment to him which would ensure that he receives "at least" one-third of the net marital estate. *Id.* at 15. Upon our review of the record, we conclude that Jeffrey's assertions on appeal have no merit, because his calculations of each party's share of the net marital estate are in error.

[6] Under Neb. Rev. Stat. § 42-365 (Reissue 2008), the equitable division of property is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in § 42-365. *Sitz v. Sitz*, 275 Neb. 832, 749 N.W.2d 470 (2008). In this case, Jeffrey does not contest the district court's classifications of marital and nonmarital property or its valuation of any particular marital asset or liability. Rather, he focuses his argument on the third step of the division of property, the court's division of the marital estate between the parties.

[7,8] Although the division of property is not subject to a precise mathematical formula, the general rule is to award a spouse one-third to one-half of the marital estate, the polestar being fairness and reasonableness as determined by the facts of each case. *Millatmal v. Millatmal*, 272 Neb. 452, 723 N.W.2d 79 (2006). Section 42-365 provides, "The purpose of a property division is to distribute the marital assets equitably between the parties." That statutory section also indicates that in dividing the marital estate, a court should consider such things as the circumstances of the parties; the duration of the marriage; and the history of the contributions to the marriage by each party, including contributions to the care and education of the children and interruption of personal careers or educational opportunities.

Before we address Jeffrey's assertion that the district court erred in its property distribution because it did not adhere to the general rule to award each spouse one-third to one-half of the net marital estate, we must first address what evidence we are to consider in our analysis. In his brief on appeal, Jeffrey relies heavily on letters that transpired between the parties' attorneys and the district court prior to the entry of

the decree of dissolution. These letters were never filed in the district court. When Jeffrey filed his notice of appeal with this court, he also filed a request with the district court to reopen the record in order to include all of these letters. The district court denied his request. Jeffrey then requested a supplemental transcript be filed in this court, which transcript included his motion to reopen the record. His motion included, as exhibits, copies of the letters that transpired between the parties and the court.

We find that the letters are not properly before us, and, as such, we do not consider the substance of the letters in our resolution of Jeffrey's assigned error. The letters were never file stamped, nor were they included in the district court's case file. Moreover, the district court specifically declined to reopen the record to include the correspondence.

We now address Jeffrey's assertion that the court erred in its distribution of the net marital estate. Jeffrey asserts that he received only 16 percent of the marital estate. We find that Jeffrey's calculations are inaccurate because he erred in including the parties' attorney fees as a marital debt.

In his calculations of each party's share of the marital estate, Jeffrey included the parties' attorney fees as a marital debt. A marital debt has previously been defined by this court as a debt incurred during the marriage and before the date of separation, by either spouse or both spouses, for the joint benefit of the parties. *McGuire v. McGuire*, 11 Neb. App. 433, 652 N.W.2d 293 (2002). The attorney fees incurred by Jeffrey and LaLinda during the pendency of these dissolution proceedings do not constitute a marital debt. This debt was incurred after the parties were estranged and after LaLinda filed her complaint for dissolution of marriage. In addition, the attorney fees incurred by each party were clearly not for the parties' joint benefit.

When we recalculate each party's share of the net marital estate without including the attorney fees as a marital debt, we find that Jeffrey was awarded 36 percent of the marital estate, while LaLinda was awarded 64 percent of the estate. Accordingly, we find that contrary to Jeffrey's assertions on appeal, he did receive more than one-third of the net marital

estate and the district court adhered to the "general rule" that each spouse is entitled to one-third to one-half of the marital estate. And, upon our de novo review of the record, we affirm the decision of the district court concerning the division of the marital estate.

3. LaLinda's Cross-Appeal

(a) Valuation of Retirement Account

Evidence presented at trial revealed that Jeffrey had two retirement accounts as a result of his employment with Hawkins Construction. The first account was referred to as a "Hawkins International, Inc. 401k Profit Sharing Plan and Trust." Testimony at trial revealed that Jeffrey contributes to this account on a regular basis and that all of his contributions were made during the course of the parties' second marriage. Just prior to the time of trial, this account was valued at $59,701.85, and the district court awarded each party one-half of the amount of the account. LaLinda's appeal does not concern this account. Instead, she focuses her assertions on Jeffrey's second retirement account with Hawkins Construction.

The second account was referred to as a "Hawkins Employee Benefit Pension Plan." The parties agreed that this account existed prior to the time of the parties' second marriage in July 2000, but that Jeffrey has made regular contributions to this account since that time. Just prior to the time of trial, this account was valued at approximately $97,500.

During LaLinda's testimony, she initially asked that she be awarded one-half of the entire value of Jeffrey's pension plan. However, later in her testimony, LaLinda acknowledged that only a portion of that retirement account was marital property. She testified that it was her understanding only about 5 percent of the account had accrued during the parties' current marriage and that she was not asking to receive the total amount of that account. Instead, she was asking to receive only the 5 percent of the account that amounted to marital property.

In fact, on LaLinda's proposed property distribution balance sheet, she noted that a majority of that account, totaling approximately $92,000, was Jeffrey's nonmarital property. She

then indicated that she was asking for the marital portion of the account, which was about $5,000.

In the decree, the district court found that the marital portion of Jeffrey's pension plan totaled $36,333.33. The court divided the marital portion of the account equitably between the parties such that Jeffrey and LaLinda each received about $18,000.

On appeal, LaLinda argues that the court erred in its valuation of Jeffrey's pension plan. Specifically, she argues that the court erred in determining that a majority of the retirement account constituted Jeffrey's nonmarital property. LaLinda argues that because the parties remarried each other less than 6 months after the entry of the decree dissolving their first marriage, the original decree is void, and that, as a result, the majority of the retirement account is actually marital property subject to an equitable division between Jeffrey and LaLinda. Upon our review of the record, we find that LaLinda's assertion has no merit.

As we discussed above, the equitable division of property is a three-step process and the first step is to classify the parties' property as marital or nonmarital. See § 42-365. See, also, *Sitz v. Sitz*, 275 Neb. 832, 749 N.W.2d 470 (2008). At trial, LaLinda ultimately conceded that most of Jeffrey's pension plan was nonmarital property. She testified it was her understanding that only about 5 percent of the funds in the account had accrued after the date of the parties' second marriage and that, as such, she was entitled to only 5 percent of the account. Her testimony was reiterated in her proposed property distribution.

The district court accepted LaLinda's concession that most of the retirement account was Jeffrey's nonmarital property. It then calculated the marital portion of the property and awarded both Jeffrey and LaLinda one-half of that amount. And, we note that according to the district court's calculation, LaLinda actually received more money from the account than she asked for, because she indicated that she was entitled to about $5,000 and the court awarded her more than $18,000.

[9] Because LaLinda conceded that a majority of the retirement account constituted Jeffrey's nonmarital property and because LaLinda received more money from the account than she had even requested, she cannot now assert that the court erred in its characterization or valuation of the retirement account. A party is not entitled to prosecute error upon that which was made with his or her consent. *Zawaideh v. Nebraska Dept. of Health & Human Servs.*, 280 Neb. 997, 792 N.W.2d 484 (2011).

Additionally, we note that at trial, LaLinda's other requests concerning the property division were inconsistent with her current argument that the district court erred in failing to value the parties' property as of the date of their first marriage rather than at the date of their current marriage. Specifically, we point to LaLinda's testimony that she possessed a nonmarital interest in the parties' marital home because of a portion of the award she received under the original decree. Essentially, we understand LaLinda to assert that the original decree is valid except as it applies to the valuation of Jeffrey's retirement accounts. We decline to treat the original decree as partially valid and partially void as LaLinda's argument suggests.

Finally, we note that because we find that LaLinda cannot now contest the district court's characterization and valuation of Jeffrey's retirement account because she acquiesced in the court's decision through her testimony at trial, we do not specifically address the effect of the parties' remarriage less than 6 months after the entry of the decree dissolving their first marriage. This issue is not necessary for our disposition of the current appeal.

(b) Alimony

In the decree, the district court ordered Jeffrey to pay LaLinda alimony in the amount of $1,000 per month for a period of 36 months. The court explained its decision concerning the alimony award as follows:

> [LaLinda] experienced an injury to her hip in the summer of 2009, which has required multiple surgeries, and has interfered with her employment since the time of

> her injury. [She] testified that her hip injury causes her daily pain which has made it difficult for her to maintain employment since summer 2009, and that her physicians are unable to tell her whether she will need additional surgery on her hip in the future.
>
> [Jeffrey] has been continuously employed by Hawkins Construction throughout the parties' marriage, and his income has steadily increased over that time. [His] tax return reflected that he earned $146,123 in wages in 2010 . . . , and that he currently earns $39.90 per hour . . . .
>
> The Court finds that due to the length of the marriage, the need for [LaLinda] to seek additional training, the need for [LaLinda] to obtain full-time employment on a permanent basis, the income disparity of the parties, and in light of the evidence described hereinabove, [LaLinda] is hereby awarded alimony from [Jeffrey] in the sum of $1,000 per month for a period of thirty-six (36) months.

On appeal, LaLinda argues that the district court abused its discretion in its award of alimony. Specifically, LaLinda argues that due to the large disparity in the parties' incomes, the court should have awarded her alimony in the amount of $1,500 per month for a period of 5 years. Upon our review of the record, we cannot say that the district court abused its discretion in its award of alimony. As such, we affirm the decision of the district court.

[10,11] In awarding alimony, a court should consider, in addition to the specific criteria listed in § 42-365, the income and earning capacity of each party as well as the general equities of each situation. *Marcovitz v. Rogers*, 267 Neb. 456, 675 N.W.2d 132 (2004). The criteria in § 42-365 include

> the circumstances of the parties, duration of the marriage, a history of the contributions to the marriage by each party, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities, and the ability of the supported party to engage in gainful employment without interfering

> with the interests of any minor children in the custody of such party.

Disparity in income or potential income may partially justify an award of alimony. *Hosack v. Hosack*, 267 Neb. 934, 678 N.W.2d 746 (2004).

The record reveals that Jeffrey has earned a higher income than LaLinda throughout the parties' 11-year marriage. In fact, the district court's calculation of the parties' incomes reveals that at the time of trial, Jeffrey had a net monthly income of approximately $8,200, while LaLinda had a net monthly income of approximately $2,600. Based on the court's calculations, we agree with LaLinda's assertion that there is a large disparity between the parties' current incomes. However, we do not agree with her assertion that such a disparity, by itself, justifies a higher amount of alimony for a longer duration than ordered by the district court in the decree.

In awarding alimony, a court must consider more than disparity in the parties' incomes. The court must also consider other aspects of the parties' financial circumstances, in addition to their contributions to the marriage. In this case, there was evidence that despite Jeffrey's net monthly income, he is struggling to keep up with his financial obligations. As we discussed more thoroughly above, he was awarded less than 50 percent of the parties' marital estate in addition to being ordered to pay child support and alimony. There was evidence that LaLinda is also struggling to pay her financial obligations and that she has had to take out loans or accept charitable donations to help her pay certain debts. However, there was other evidence to demonstrate that LaLinda is currently employed full time and that she is capable of maintaining such a work schedule despite her health problems.

When we consider the evidence presented at the dissolution trial as a whole, in addition to the division of property determined by the district court, we conclude that the district court did not abuse its discretion in its award of alimony to LaLinda. The court clearly considered the disparity in the parties' incomes in addition to other factors contributing to the parties' current financial circumstances in making such an award, and we affirm the court's decision.

(c) Attorney Fees

In the decree, the district court ordered Jeffrey and LaLinda to pay their own attorney fees. On appeal, LaLinda asserts that the court erred in failing to order Jeffrey to pay for all or a portion of her attorney fees. Specifically, she argues that she cannot afford to pay her attorney fees, in part, because Jeffrey's actions during the dissolution proceedings "caused [her] to incur exuberant legal fee expenses." Brief for appellee on cross-appeal at 21. Upon our review of the record, we do not find that the district court abused its discretion in failing to award LaLinda attorney fees.

[12-14] An award of attorney fees is discretionary and will not be disturbed on appeal absent an abuse of discretion. See *Emery v. Moffett*, 269 Neb. 867, 697 N.W.2d 249 (2005). The award of attorney fees depends on multiple factors that include the nature of the case, the services performed and results obtained, the earning capacity of the parties, the length of time required for preparation and presentation of the case, customary charges of the bar, and the general equities of the case. *Id.* Customarily in dissolution cases, attorney fees and costs are awarded only to prevailing parties or assessed against those who file frivolous suits. *Noonan v. Noonan*, 261 Neb. 552, 624 N.W.2d 314 (2001).

This was a particularly contentious dissolution case. Inside the courtroom, the parties were unable to come to any sort of agreement on any issue relevant to the dissolution proceedings. In fact, the parties requested the court to revise a temporary order concerning the parties' housing; the temporary alimony payments awarded to LaLinda; and custody of the parties' child, on multiple occasions during the pendency of the proceedings because the parties could not cooperate with each other. In addition, the record reveals that LaLinda filed multiple motions asking the court to hold Jeffrey in contempt for various actions.

Outside the courtroom, the parties did not get along any better. There was evidence that the parties had multiple confrontations during the proceedings, which ultimately resulted in the parties' obtaining harassment and protection orders against each other. This further complicated the parties' relationship

and communication with each other, because such orders prevented them from speaking to or making any sort of contact with each other. As such, the parties had to rely on their attorneys and the court to act as intermediaries.

Although LaLinda argues that the contentious nature of these proceedings was entirely Jeffrey's fault, the record reveals that both Jeffrey and LaLinda engaged in behavior which contributed to their poor communication and cooperation with each other. Essentially, the record reveals that both parties incurred costly attorney fees because they could not get along with each other and could not reach some sort of agreement on any issue. Based on this evidence, we cannot say that the district court abused its discretion in ordering each party to pay for his or her own attorney fees. We affirm the decision of the district court.

V. CONCLUSION

Upon our review of the record, we find that the district court did not abuse its discretion in its valuation and distribution of the marital estate, in its award of alimony to LaLinda, or in its failure to order Jeffrey to pay LaLinda's attorney fees. Accordingly, we affirm the decision of the district court in its entirety.

AFFIRMED.

RANDALL WISSING, APPELLEE, V.
WALGREEN COMPANY, APPELLANT.
823 N.W.2d 710

Filed November 20, 2012. No. A-12-361.

1. **Workers' Compensation: Appeal and Error.** An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (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 no 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. ____: ____. Findings of fact made by a compensation court trial judge are not to be disturbed upon appeal to a review panel unless they are clearly wrong, and