

OCT 07 1977

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

UPON THE PETITION OF
HERBERT B. DICKEY,

Petitioner-Appellee

AND CONCERNING
REVA E. DICKEY,

Respondent-Appellant.

Filed October 7, 1977

252
2-57788

Appeal from Greene District Court - Paul E. Hellwege, Judge.

Respondent-wife appeals the denial of alimony and attorney fees in the trial court's original dissolution decree. - Remanded with instructions.

Cudahy, Wilcox, Handley, MaGee & Polking, of Jefferson, for Petitioner-Appellee.

M. Gene Blackburn, of Fort Dodge, for Respondent-Appellant.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Respondent Reva E. Dickey appeals the denial of alimony in the original dissolution decree ending the thirty-one year marriage with petitioner Herbert B. Dickey. She also appeals the trial court's refusal to grant attorney fees. We remand with instructions.

Reva argues that the trial court erred in ordering the net worth of the parties to be divided as equally as possible in lieu of alimony. Herbert argues that the right to alimony is never absolute and is always based on the wife's need and the husband's ability to pay. In re Marriage of Murray, 213 N.W.2d 657, 660 (Iowa 1973). We agree. Herbert concludes Reva has no need for alimony and he has no wherewithal to pay it if it is ordered. We cannot determine Reva's need from the trial court record. It is inconclusive and inadequate in its documentation of the net worth or the net available monthly income and expenses of Reva and Herbert. A similar situation was presented in Lessenger v. Lessenger, 258 Iowa 170, 138 N.W.2d 58 (1965), which involved the economic provisions of a decree. The court concluded:

The general rule is where an equity case is not in a condition for a final decree, none will be made by this court, but the case will be remanded. 258 Iowa at 175, 138 N.W.2d at 60.

Reva's appeal deals only with denial of periodic alimony and trial court attorney fees. However, as Locke v. Locke, 246 N.W.2d 246 (Iowa 1976) pointed out in remanding for reopening of case for presentation of valuation evidence:

The alimony and property division portions of a dissolution decree should be interrelated in an overall attempt to fairly treat the parties involved. . . . An alimony determination cannot be made if a property division cannot be fixed. Both determinations go hand-in-hand and each depends upon a resolution of the other. 246 N.W.2d at 254.

We do not disturb that portion of the decree granting the dissolution or fixing property settlement since no appeal has been taken therefrom. We vacate the balance of the decree and remand the matter to the trial court with directions to reopen the evidence on the economic issues.

Once it is determined what valuation should be assigned to the property received by Reva and by Herbert under the provisions of the decree, the trial court shall proceed to establish what resources are available to each party. This

determination must include the assets awarded to each party, and their income-producing character, as well as the current income available to each party from their occupational pursuits. The trial court shall then consider Reva's need for periodic alimony and Herbert's capacity to pay it. The issue of trial court attorney fees must also be redetermined in like fashion.

In accordance with the holding in *Locke v. Locke*, 246 N.W.2d at 255, the trial court, upon remand, shall also determine the amount of attorney fees, if any, which should be paid by Herbert for services of Reva's attorney on this appeal.

Remanded with directions.