

This appeal arises from a divorce case. All issues were stipulated except the issue of appellant's right of visitation with the parties' minor child. The trial court granted restricted visitation privileges to the appellant. We reverse the judgment of the trial court and remand the case for a further hearing.

The appellant challenges the trial court's judgment in restricting the evidence which she was allowed to present in the trial of her case.

We believe that the case must be reversed for two reasons. Firstly, the court heard only the testimony of the parties and denied the appellant, over the objections of her attorney, an opportunity to present the testimony of other witnesses which were present to testify in the case. While there was no offer of proof, we feel that, under the circumstances of the case, where the trial court declined to hear any proof other than that of the parties, no offer of proof is necessary. It is evident from comments of counsel that the testimony of the witnesses had a direct bearing on the issue before the court. We feel, therefore, that the substance of the evidence was apparent from the context. See Rule 103, paragraphs (a)(2) and (d), Tennessee Rules of Evidence.

Secondly, the judgment from which this appeal is taken is not a final judgment from which an appeal as of right lies. See Rule 54.02, Tennessee Rules of Civil Procedure and Rule 3, Tennessee Rules of Civil Procedure. The court's final decree specifically provided that "[a]ll additional visitation previously agreed to by the parties is suspended pending both parties attending parenting classes and a further review before the court" Obviously, an interlocutory appeal under either the provisions of Rule 9 or 10 of the Tennessee Rules of appellate procedure would be the appropriate vehicle to bring this action before this court for review.

The judgment of the trial court is reversed and the case is remanded to the trial court for a full hearing of all relevant and material evidence. In so doing, we neither express an opinion on any issue relating to the merits of the case nor do we intend for this opinion to restrict in any way the discretion of the trial court in refusing to limit cumulative testimony.

The visitation privileges set by the court shall remain in full force and effect pending a full hearing.

In our discretion costs of this appeal are taxed equally to the appellant and appellee.

Don T. McMuray, J.

CONCUR:

Herschel P. Franks, J.

Clifford E. Sanders, Sr. J.

IN THE COURT OF APPEALS

JOHN WAYNE BALDWIN,)	JEFFERSON CIRCUIT
)	C. A. NO. 03A01-9505-CV-00322
)	
Plaintiff - Appellee)	
)	
)	
)	
vs.)	HON. REX HENRY OGLE
)	JUDGE
)	
)	
)	
SHERRY DARLENE BALDWIN,)	REVERSED AND REMANDED
)	
Defendant - Appellant)	

ORDER

This appeal came on to be heard upon the record from the Circuit Court of Jefferson County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was reversible error in the trial court.

The judgment of the trial court is reversed and the case is remanded to the trial court for a full hearing of all relevant and material evidence. In so doing, we neither express an opinion on any issue relating to the merits of the case nor do we intend for this opinion to restrict in any way the discretion of the trial court in refusing to limit cumulative testimony.

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