



This is a divorce action. The defendant (wife) asserts on this appeal, among other things, that the trial court abused its discretion in denying a continuance of the trial. The record reflects that there was a great deal of confusion as to the way and manner the case was set for trial because of the resignation of the former Circuit Judge. The wife's counsel claims to have had no notice of the trial date until the day the case was set for trial. On that date, he applied to the court for a continuance. The court continued the case until the following morning at 7:00 a.m. Prior to the trial, the court allowed the wife's attorney to make a motion for a continuance on the record, with a written motion, to be filed as exhibit No. 1. Counsel's affidavit supporting the motion for a continuance was allowed to be filed as exhibit 2.

Upon consideration of the record, we are of the opinion that the wife's motion should have been granted. It is demonstrated in the record that the wife's counsel had not received information about the value of the husband's benefits under the Tennessee Consolidated Retirement Plan. We are of the opinion, that under the circumstances of the case, counsel for the wife was duly diligent in trying to get the information and it appears that she was prejudiced by the failure to timely receive the information.

We are of the opinion that the motion for continuance should have been granted. Accordingly, we vacate the judgment of the trial court in its entirety.

Since this issue is dispositive of the case, we decline to address the remaining issues raised by the parties. This case is remanded to the trial court for a retrial of all issues. In so doing, we express no opinion on any issue remaining to be heard by the court. In our discretion, we tax the costs equally between the parties.

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Don T. Murray, J.

CONCUR:

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Houston M. Goddard, Presiding Judge

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Herschel P. Franks, Judge

IN THE COURT OF APPEALS

GLADSTONE RALPH HOBBS,	)	GREENE CIRCUIT
	)	C. A. NO. 03A01-9702-CV-00063
	)	
Plaintiff - Appellee	)	
	)	
	)	
	)	
	)	
vs.	)	HON. CHESTER MAHOOD
	)	JUDGE BY DESIGNATION
	)	
	)	
	)	
	)	
MOLLIE JANE HOBBS,	)	REVERSED AND REMANDED
	)	
Defendant - Appellant	)	

**ORDER**

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

Accordingly, we vacate the judgment of the trial court in its entirety. This case is remanded to the trial court for a retrial

of all issues. In our discretion, we tax the costs equally between the parties.

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