

1992

Lynette Manske Torres v. John Martin Torres : Brief of Appellant

Utah Supreme Court

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David R. Hartwig; Attorney for Respondent.

Craig M. Peterson; Littlefield & Peterson; Attorney for Appellant.

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IN THE COURT OF APPEALS
IN AND FOR THE STATE OF UTAH

LYNETTE MANSKE TORRES,

Plaintiff/Appellant,

v.

JOHN MARTIN TORRES,

Defendant/Respondent.

:
: APPELLANT'S BRIEF
:
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:
:
:
:
:
: Case No. 920101-CA
: Civil No. 884902184 DA

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
HONORABLE KENNETH RIGTRUP
District Court Judge

CRAIG M. PETERSON - 2579
Littlefield & Peterson
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435
Attorney for Appellant

DAVID R. HARTWIG
263 East 2100 South
Salt Lake City, Utah 84115
Telephone: (801) 486-1715
Attorney for Respondent

FILED

AUG 31 1992

COURT OF APPEALS

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CRAIG M. PETERSON - 2579
Littlefield & Peterson
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435
Attorney for Appellant

DAVID R. HARTWIG
263 East 2100 South
Salt Lake City, Utah 84115
Telephone: (801) 486-1715
Attorney for Respondent

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LYNETTE MANSKE TORRES,
Plaintiff/Appellant,

JOHN MARTIN TORRES,
Defendant/Respondent.

2

the time of the parties' separation in January, 1989, and are currently retained in his possession. Mortensen v. Mortensen, 760 P.2d 304, 308 (Utah 1988).

3. The Court abused its discretion by requiring the Plaintiff to participate in the payment of medical expenses for the surgery performed for a deviated septum and ventral hernia, when there would have been no charges beyond the deductible, had the Defendant not unilaterally canceled Plaintiff's health insurance the same day as the operation without giving anyone notice other than the health carrier. Berry v. Berry, 635 P.2d 68 (Utah 1981).

4. The Court abused its discretion by failing to award the Plaintiff at least one-half of her attorney's fees which would not have been incurred but for the Defendant's acts in violation of reasonable rules of equity by taking the rings, which he had given to the Plaintiff as gifts and by cancelling the health insurance for the Plaintiff on the date of her surgery, August 15, 1990. Kerr v. Kerr, 610 P.2d 1380 (Utah 1980).

DETERMINATIVE STATUTES

Section 30-3-5(1) in pertinent part states:

When a Decree of Divorce is rendered, the Court may include in it equitable orders relating to the children, property and parties.

STATEMENT OF THE CASE

Plaintiff/Appellant appeals from a Supplemental Decree of Divorce entered in the Third Judicial District Court, In and For Salt Lake County, State of Utah, on January 21, 1992. A Decree of Divorce was entered in this matter by the Court on February 4, 1991 and all other matters were reserved for trial.

RELEVANT FACTS

1. A Decree of Divorce was entered in this matter on January 30, 1991, through a bifurcated proceeding reserving all remaining issues to be tried by the Court.

2. The Supplemental Decree of Divorce was entered on January 21, 1992 (attached as Exhibit "A") and provided in pertinent part as follows:

- (1) At paragraph two, the Defendant was awarded an equity lien against the Plaintiff's residence in the amount of \$4,000;
- (2) At paragraph four, the Decree directed that the Plaintiff shall be awarded two rings purchased by the Defendant from Morgan Jewelers and given to the Plaintiff as gifts on or about September 26, 1987. However, Plaintiff was ordered to reimburse the Defendant for any payments he made to Morgan

Jewelers for the rings since the parties' separation in mid-January, 1989. The Defendant was allowed to hold a possessory lien on the rings until the payments required by Plaintiff are fully satisfied and, further, directed the Defendant to restore the original stones to the rings and obtain certification from Morgan Jewelers that the rings are the same as they were when originally delivered to him in September, 1987.

- (3) At paragraph six, the Court ordered that each of the parties would pay one-half of the total medical bills incurred for surgery and treatment to the Plaintiff on or about August 15, 1990 for a deviated septum and ventral hernia, even though the Defendant had terminated the medical insurance for the Plaintiff which would have paid for said surgery, and the termination of the insurance occurred on the date of surgery, August 15, 1990.
- (4) At paragraph seven, the Court ordered that each of the parties would pay their own

labor was hired, and the Plaintiff and her two daughters were involved in the work. A reasonable value for all of the home improvements, at the time of completion, was \$12,000. Even though the home had depreciated over the past several years, the improvements have added value to the property. It is reasonable for the Defendant to be awarded \$4,000 as the reasonable value of his contributions to the improvements.

- (5) The Court found that the Defendant purchased two ladies' rings from Morgan Jewelers, one costing \$1,575 and the other costing \$2,538. The total charges incurred by the Defendant on his account at Morgan Jewelers was \$4,327.03. Shortly before Christmas 1987, Defendant gave the rings to the Plaintiff as gifts. When the parties separated, the Defendant was still paying on the rings. The Court awarded the rings to the Plaintiff but allowed the Defendant to continue to hold a possessory lien on the rings until she paid the Defendant for all payments made since January, 1989,

when the parties separated. The Court further found that the Defendant had removed the original stones from the rings and found that the original stones should be restored to the rings and certified by Morgan Jewelers that they were in the same condition as when originally purchased.

- (6) Defendant caused Plaintiff's insurance coverage to be terminated effective August, 1990, several months before the divorce was granted in this matter. There were no controlling Orders concerning health care coverage. The Court found at pre-trial on February 1, 1990, that the Plaintiff testified that the Defendant had mentioned to her that he had taken her off the insurance coverage, and that the Court had admonished Defendant to reinstate the coverage. The Court found no record other than the testimony of the Plaintiff, and found that no Order had been entered by the Court on the issue of insurance.

attorney's fees and costs they incurred in these proceedings.

3. In support of the foregoing Order, the Court entered Findings of Facts (attached as Exhibit "B") as follows:

- (1) Plaintiff was living in her own home with her daughters from a previous marriage when a relationship commenced with the Defendant. She was a self-employed cosmetologist.
- (2) The parties did not file a joint tax return for the year 1986, the year of the marriage. Plaintiff sustained an operating loss of approximately \$3,800 in her business for that year. Defendant started employment for C. R. England and Sons sometime around that time, but apparently did not have sufficient earnings to justify the filing of a joint tax return and the use of the net operating loss for tax purposes.
- (3) In 1987, Defendant brought in earnings of \$26,500, while Plaintiff reported \$787 income from her business. Defendant earned approximately \$24,000 in 1988 while the Plaintiff earned approximately \$4,200 from her

business. Joint returns were not filed in 1989 and Plaintiff had a net income from her business for that year of approximately \$8,800.

- (4) Plaintiff purchased her home...in 1982 for approximately \$52,000. The Defendant claims an interest in that home. As of May 13, 1991, the value of the home was appraised at \$37,000, even though the home has a current mortgage of approximately \$47,000. During the marriage, the home was re-painted, re-carpeted, the fireplace was removed and refinished, the basement was finished, including finishing of a bathroom, cedar was installed in the closet, a banister was installed down the stairway, the backyard was completed, and a cement patio was installed. Also, ceramic tile was installed in the entry way and kitchen. There were materials and outside labor costs of approximately \$6,000, most of which came from joint marital funds. The greater part of the labor was performed by the Defendant, and a small portion of the

- (7) The Court further found that on August 15, 1990, surgical correction of a deviated septum and a ventral hernia took place for the Plaintiff, and the Utah Public Employee's Health Program declined payment for lack of coverage, because the Defendant had terminated health care coverage on the date of the surgery, August 15, 1990. The termination of the coverage was retroactive to August 1, 1990. The total medical bills for the surgery were in the amount of \$4,690, and Plaintiff asked recovery of this amount (less deductible) against the Defendant. The Court found that since there was no Order regarding health insurance coverage, it is reasonable that the obligations be treated as any other marital obligation and each pay one-half of the liability.
- (8) Each party was seeking attorney's fees, but the Court found that neither demonstrated a need for an award of fees. Further, each of the parties, in concert with their attorneys, contributed to the inability to settle.

Plaintiff, because of the nature of the disputed assets, wanted everything and the Defendant felt justified in wanting something. When the dropping of the health and medical coverage on Plaintiff occurred, that ended any possibility of settlement. Each party paid a high price in these proceedings, and on balance, each party should bear their own attorney's fees and costs.

SUMMARY OF ARGUMENT

1. The trial court is required to enter equitable orders relating to the marital estate. The marital residence was pre-marital property which the Plaintiff purchased with her own funds and which had a negative value at the time of the Decree of Divorce; it was an abuse of discretion to award the Defendant an equitable lien in the marital residence.

2. The Court failed to follow settled legal principals regarding gifts to spouses as being separate property when it awarded the Plaintiff two rings which were gifted to her by the Defendant in September, 1987, but required the Plaintiff to reimburse Defendant for all payments made on the rings after the parties separated in January, 1989.

3. The Court abused its discretion in requiring the Plaintiff to pay one-half of the medical expenses incurred for her operation on August 15, 1990 where the Defendant, who had historically maintained and paid the medical insurance for the parties, but canceled the insurance policy on the same day as the operation without prior notice to the Plaintiff.

4. The Court abused its discretion in failing to award the Plaintiff at least one-half of her attorney's fees where the Defendant's outrageous actions precipitated the necessity of trial on the issues.

LEGAL ARGUMENT

A. The Court Abused Its Discretion in Awarding Defendant an Equitable Lien in the Plaintiff's Residence Where the Residence Had a Negative Value and was a Pre-marital Asset. The Court awarded the Defendant a \$4,000.00 equitable lien in Plaintiff's home (Supplemental Decree, para. 2). The Plaintiff purchased the home in 1982 for \$52,000.00; as of May 13, 1991, it had an appraisal value of \$37,000.00. As of the date of trial, the then current mortgage was \$47,000.00 (Findings of Fact, para. 7). The Defendant paid no rent or mortgage payments, but the trial court based its award on work which had been performed by the Defendant to improve the value of the home. All materials used in the maintenance were paid from joint marital funds. There is no

dispute that as of the date of trial, the residence had a negative value.

The Court awarded the Defendant an equitable interest in property which had no equity, and in effect, further increased the debt on Plaintiff's home by \$4,000.00. Where interpreting the equitable division statutes governing Divorce Decrees (§ 30-3-5(1), Utah Code Annotated), Utah courts consistently recognize that trial courts are conferred with broad discretion in dividing property between the parties to a divorce purely based upon equitable circumstances. Burke v. Burke, 733 P.2d 133, 134-135 (Utah 1987). However, trial courts are required to make the ultimate division equitable. Equitable distribution of personal and real property requires that the property be fairly divided between the parties, given their contributions during the marriage and their circumstances at the time of divorce. Neumeyer v. Neumeyer, 745 P.2d 1276, 1278 (Utah 1987).

It is patently inequitable to award the Defendant an equity interest in property with a negative value. In Jackson v. Jackson, 617 P.2d 338 (Utah 1980), the parties had a short term marriage during which time they incurred \$60,000.00 in debt, which significantly exceeded all assets. The parties acquired a residence with a loan from the Plaintiff's father; the residence at the time of the divorce had \$6,000.00 equity. The residence, along

with all other assets, were awarded to the Defendant and the Defendant was required to pay all liabilities. The Plaintiff appealed from the Divorce Decree requesting the Court to award her the \$6,000.00 in equity in the home, as well as other property, free of liens and encumbrances. Upholding the trial court, the Court held that where the Defendant was required to pay all indebtedness on the property, which dramatically exceeded its value, it was fair and equitable that he should also receive the majority of the property. Contrary to the equitable principles applied in the Jackson case, the trial court is awarding Mr. Torres a lien in pre-marital property which has a negative value, where the debt is being totally paid by Mrs. Torres. Additionally, the trial court failed to take into account that Mr. Torres made no direct monetary contributions toward the home. Rather than awarding Mr. Torres a \$4,000.00 equitable lien, as though the property increased in value, it would be more equitable to require Mr. Torres to pay Mr. Torres for the decline in value which occurred while the parties lived together. In essence, he lived in the home for free, paying no rent or mortgage payments; and is now being compensated for his only contribution. The net effect is the Plaintiff pays for Defendant's housing expenses.

B. Requiring the Plaintiff to Pay for Two Rings Which Were Gifts to Her From Her Husband is Inequitable. The Court found

that the Defendant purchased two rings from Morgan Jewelers on September 26, 1987 for a total cost of \$4,327.03 (Findings of Fact, para. 10). The Court further found that the Defendant made completed gifts to the Plaintiff shortly before Christmas 1987. When the parties separated in mid-January, 1989, the Defendant was still paying on the rings. The Court awarded the rings to the Plaintiff but required her to reimburse the Defendant for all payments made on the rings since January, 1989 (Supplemental Decree, para. 4).

The general legal principals relating to gifts received during marriage is outlined in Mortensen v. Mortensen, 760 P.2d 304, 308 (Utah 1988). In making an equitable division, trial courts should generally award property acquired by one spouse by gift and inheritance during the marriage to that spouse, together with any appreciating or enhancement of its values unless "1) the other spouse has contributed to the enhancement, maintenance or protection of that property, thereby acquiring an equitable interest in it, or (2) the property has been consumed or its identity lost through commingling of exchanges or where the acquiring spouse had made a gift of an interest in the property to the other spouse."

The case before the Court does not fall with any of the exceptions outlined in Mortensen. Mr. Torres made a completed gift

to Mrs. Torres with the intent that she become the owner of the rings and not that she be required to pay for the rings. Once the gift is completed, the obligation to pay for the gifts should remain with Mr. Torres. By requiring Mrs. Torres to essentially payoff the balance owing on the rings since January, 1989, the Court is taking the gift to Mrs. Torres and requiring her to pay for it. This is true even though Mr. Torres took the rings at separation, has kept them in his possession since then and has changed the stones to prevent Mrs. Torres from receiving the full value of the gift.

Additionally, the Court's ruling is inconsistent with the legal principal that "the marital estate should be valued as of the time of the Divorce Decree." Berger v. Berger, 713 P.2d 695, 697 (Utah 1985). The Court related its Order back to the date of separation in January, 1989, rather than valuing the gift without debt as of the date of the Divorce Decree. This method of retroactive valuation of liabilities and assets of the parties is simply not warranted by the circumstances in this case. There is no equitable reason that the trial court should deviate from the general rule.

The Court abused its discretion in requiring the Plaintiff to pay for the rings gifted to her by the Defendant.

C. Requiring the Plaintiff to Pay One-half of the Medical Expenses When the Defendant Terminated the Insurance Policy on the Day of the Operation is Inequitable. The Defendant had maintained medical insurance for the Plaintiff during the marriage. During the course of the litigation, there were no Orders entered regarding maintenance of insurance. However, the Plaintiff testified that the Defendant mentioned that he had taken the Plaintiff off the insurance coverage, and the Court admonished the Defendant to reinstate the coverage (Findings of Fact, 12). In July, 1990, Plaintiff consulted with a physician who obtained pre-approval from the Utah Public Employee's Health Program. In reliance of the historical fact of the Defendant maintaining the Plaintiff on his health policy, the Plaintiff had an operation on August 15, 1990. On the same date, the Defendant terminated his coverage of the Plaintiff, which was retroactive to August 1, 1990. Rather than dealing with the inequity created by the Defendant's actions, the Court treated the medical bills as any other marital debt and required the Plaintiff and Defendant to each pay one-half of the medical bills incurred for the operation. (Supplemental Decree, para. 6).

The gross injustice created by the Court's Order is evident. The Court through the concept of fairness and equity out

the window by its Order. As stated in Turner v. Turner, 649 P.2d 6 (1982):

Although this Court may weigh the evidence and substitute its judgments for that of the trial court in divorce actions, this Court will not do so lightly and merely because its judgment may differ from that of the trial judge. A trial court's apportionment of property will not be disturbed unless it works such a manifest injustice or inequity as to indicate a clear abuse of discretion, id at 8.

Without notice, and with apparent malice, the Defendant's action unquestionably were directed at financially harming the Plaintiff. Mrs. Torres acted innocently and in reliance upon her husband having maintained the health insurance policy. The Court requiring Mrs. Torres to pay one-half of the medical bills, which would have been paid by insurance but for Defendant's maliciousness, is clearly unjust.

D. The Trial Court's Failure to Award Mrs. Torres' Attorney's Fees is Inequitable. The Court found that the Defendant made completed gifts to the Defendant of the two rings shortly before Christmas in 1987 (Findings of Fact, 10). However, the Defendant had taken the rings from the Plaintiff and would not return them. The Court further found that the Defendant terminated Plaintiff's coverage under his health plan on August 15, 1990, the day of the Plaintiff's operation (Findings of Fact, 12). The Court further found that the Defendant terminating the health and medical

coverage on Plaintiff ended any possibility of settlement and "each party has paid a high price." The Court also found that each party, because of the disputed nature of the assets, contributed to the inability to settle the case, and each party had approximately the same monthly income and, therefore, did not demonstrate a need for fees. However, it is apparent from the actions of the Defendant that the ruthless manner in which he has treated the Plaintiff during this litigation has propelled the matter to trial. Equity demands recognition of these factors which have prolonged litigation requiring the Plaintiff to incur significantly greater attorney's fees than otherwise would have been necessary had the Defendant acted reasonably.

Traditionally, Utah courts have required a showing that a party seeking alimony show need and a basis for the reasonableness of the award. Kerr v. Kerr, 610 P.2d 1380, 1384-85 (Utah 1980). A factor which should be considered by the Court, however, when dealing with the basis of awarding attorney's fees, is that party which is responsible for prolonging the litigation. As stated by the Plaintiff, she anticipated paying her attorney's fees and would have settled on almost all issues until the point when Mr. Torres took her off of his insurance and refused to pay for the medical bills. (Transcript pp. 91-92 attached as Exhibit "C"). When the mean-spirited actions of one party to a litigation


promote continued attorney's fees, it is fair and equitable that the parties so behaving be charged with the fees.

CONCLUSION

It is the Plaintiff's position that equity require that the Court's Order granting the Defendant an equitable lien of \$4,000.00 in Plaintiff's home be set aside based upon the abuse of discretion by the trial court. The Court Order requiring the Plaintiff to pay for the rings after separation in January, 1989, which were given to her by the Defendant should be set aside in that the Order fails to follow settled principals of law relating to gifts. The Court's Order requiring the Defendant to pay one-half of her medical expenses is unreasonable and inequitable and should be set aside as an abuse of discretion, requiring the Defendant to pay all of the medical expenses, except the deductible. The Court's failure to award at least one-half of Plaintiff's attorney's fees should be set aside as an abuse of discretion, and the Defendant should be required to pay one-half thereof.

DATED this 31 day of August, 1992.

LITTLEFIELD & PETERSON


CRAIG M. PETERSON
Attorney for Plaintiff/
Appellant

CERTIFICATE OF HAND-DELIVERY

I hereby certify that I caused to be hand-delivered, a true and correct copy of the foregoing, APPELLANT'S BRIEF, this 21st day of August, 1992, to:

David R. Hartwig, Esq.
263 East 2100 South
Salt Lake City, Utah 84115
Attorney for Respondent



Torres.AB/P8

EXHIBIT "A"

1/24/92

= 12

Craig M. Peterson (2579)
Attorney for Plaintiff
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

LYNNETTE MANSKE TORRES,	:	SUPPLEMENTAL DECREE OF DIVORCE
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN MARTIN TORRES,	:	
	:	
Defendant.	:	Case No. 894902184
	:	Judge

-----oo0oo-----

The above matter came before the Court for trial on July 31, 1991 and concluded on August 6, 1991. The Plaintiff was present in person and represented by counsel, Craig M. Peterson. The Defendant was present in person and represented by counsel, David R. Hartwig. The Court having heretofore entered its Findings of Fact and Conclusions of Law, does now enter its Supplemental Decree of Divorce as follows:

SUPPLEMENTAL DECREE OF DIVORCE

1. The Decree of Divorce heretofore entered in this matter on February 4, 1991, is supplemented for the division of property by this Order.

2. The Defendant shall be awarded an equity lien against the Plaintiff's residence in the amount of \$4,000.

3. The Plaintiff shall be awarded all right, title and interest in and to the proceeds from the sale of the 1973 Reinell boat, and each of the parties shall be denied any additional claims they have made for recovery on losses and repairs made to said boat.

4. The Plaintiff shall be awarded both rings purchased by the Defendant from Morgan Jewelers on or about September 26, 1987. However, Plaintiff is ordered to reimburse the Defendant for any payments he has made to Morgan Jewelers for the rings since the parties' separation in mid-January, 1989. The Defendant shall hold a possessory lien on the rings until the payments provided herein are fully satisfied. The Defendant shall restore the original stones to the rings and obtain certification from Morgan Jewelers that the rings are the same as they were when they were originally delivered to him in September, 1987.

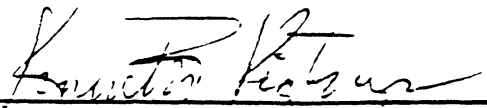
5. The Defendant shall be ordered to pay the uncovered portion of treatment for the Plaintiff's jaw in the amount of \$65.75.

6. Each of the parties shall pay one-half of the total medical bills incurred for surgery and treatment to the Plaintiff on or about August 15, 1990 for a deviated septum and a ventral hernia. Further, each of the parties shall be ordered to pay one-half of any fees or costs taxed against the parties through any collection or legal actions, and the Defendant shall be ordered to hold the Plaintiff harmless therefrom.

7. Each of the parties shall be ordered to pay their own attorney's fees and costs which they have incurred in these proceedings.

DATED this 21st day of January, 1992.

BY THE COURT:


District Court Judge

Approved as to form:

DAVID R. HARTWIG, Esq.
Attorney for Defendant

Torres.SDC/P12

EXHIBIT "B"

CRAIG M. PETERSON - 2579
Attorney for Plaintiff
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102
Telephone: (801) 531-0435

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

LYNNETTE MANSKE TORRES,	:	
	:	FINDINGS OF FACT AND
Plaintiff,	:	CONCLUSIONS OF LAW
	:	
v.	:	
	:	
JOHN MARTIN TORRES,	:	
	:	
Defendant.	:	Case No. 894902184 DA
	:	Judge Kenneth Rigtrup

-----oo0oo-----

The above matter came before the Court on Wednesday, the 16th day of January, 1991, at the hour of 8:30 a.m., the Honorable Kenneth Rigtrup, Judge presiding for hearing. The Plaintiff was present in person and represented by Counsel, Craig M. Peterson. The Defendant was present in person and represented by Counsel, David R. Hartwig. The Defendant having agreed, by and through Counsel, that the Plaintiff may receive a Decree of Divorce through bifurcation of these proceedings reserving all remaining issues for trial before the Court, the Court having concluded that the matter should be bifurcated, and the default of the Defendant entered as

to the issue of the granting of the divorce, the Court having entered the default of the Defendant for that purpose, having received the testimony of the Plaintiff and having reviewed the pleadings on file herein, does now enter its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. The parties herein were bona fide residents of Salt Lake County, State of Utah, for more than three months immediately proceeding the filing of this action.

2. The parties are husband and wife, having been married in Salt Lake County, State of Utah, on July 19, 1986. During the term of the marriage the parties commenced to argue continuously, the Defendant committed assault and battery upon the person of the Plaintiff causing her physical injury, the parties have lived separate and apart for in excess of two years, the Plaintiff is no longer in love with the Defendant and cannot continue to remain married to him.

3. The Plaintiff is in need of health insurance and such insurance should be available to her through Cobra legislation. Each of the parties should be required to undertake the completion of any documents necessary to provide such health insurance for the benefit of the Plaintiff.

4. All remaining issues should be reserved to be

determined at the time of trial in this matter.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, this Court does enter its just and equitable Conclusions of Law as follows:

1. This Court does have jurisdiction to enter a Decree of Divorce in this matter.

2. The Plaintiff should be awarded a Decree of Divorce against the Defendant upon the grounds of irreconcilable differences.

3. Each of the parties should be ordered to undertake whatever actions are necessary for the Plaintiff to obtain health and accident insurance through the Defendant's employer pursuant to the requirements of Cobra.

4. All remaining issues should be reserved for final determination at trial in this matter.

5. This matter is set to be tried to the Court on those issues on May 17, 1991, at the hour of 8:30 a.m.

DATED this ____ day of _____, 1991.

BY THE COURT:

Kenneth Rigtrup
District Court Judge

Torres v. Torres
Re: Findings of Fact and
Conclusions of Law

Approval as to form:

David R. Hartwig

11004.pld/cmpl

EXHIBIT "C"

1 canceled?

2 A. Yes.

3 Q. In addition, the primary issue has been
4 the house and his interest in the house?

5 A. Yes.

6 Q. Is the -- are you willing, again, to
7 give him that house?

8 A. Definitely.

9 Q. Has the issue been any interest that he
10 might have in having paid for that boat?

11 A. Pardon me?

12 Q. Has an issue also been any interest that
13 he might have had in paying for that boat?

14 A. Yes.

15 THE COURT: I'm not sure that I
16 understand that.

17 MR. PETERSON: That's okay. It's not a
18 very good question, anyway.

19 As a result of those positions on the
20 part of Mr. Torres, is it your position that you're in
21 court unnecessarily today?

22 A. Yes.

23 MR. PETERSON: Thank you.

24 THE COURT: You may cross.

25

1 Q. Are you now, however, asking the Court
2 to award you attorney fees in this matter?

3 A. Yes, I am.

4 Q. Do you have a specific amount in mind
5 that you are asking the Court to award?

6 A. I would like him to pay half of them, at
7 least; or more than that.

8 Q. Half of the total fees that have been
9 incurred?

10 A. Yes.

11 Q. And it is your expectation that the fees
12 will generally exceed \$5,500, in total, is that
13 correct?

14 A. Yes.

15 Q. Is it your desire that the Court order
16 Mr. Torres to pay not less than \$2,500, and
17 preferably, \$3,000 toward your fees?

18 A. Yes.

19 Q. Why is it that you ask the Court for
20 that award in fees?

21 A. Because I didn't ask to be here over
22 this surgery. I mean, it could have been a simple
23 thing had we just settled out of court.

24 Q. And, in fact, were you at a stage that
25 was verging on settlement until the insurance was