

1992

# Lynette Manske Torres v. John Martin Torres : Unknown

Utah Supreme Court

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David R. Hartwig; Attorney for Respondent.

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

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**COURT OF APPEALS**

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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

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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 considered the testimony of the witnesses who were sworn and testified, having reviewed a large number of exhibits, which were offered and received, having reviewed the pleadings on file herein, and being well-advised in the premises, does enter its Findings of Fact as follows:

### FINDINGS OF FACT

1. A Decree of Divorce was entered in this matter by the Court on February 4, 1991. All other issues were reserved for trial. The issues remaining for disposition at trial were (a) interest claimed by Defendant in Plaintiff's home; (b) interest claimed by Defendant in a 1973 Reinell boat; (c) the entitlement to two (2) diamond rings; (d) responsibility for outstanding medical bills of \$65.75 for treatment of Plaintiff's jaw; (e) responsibility for outstanding medical bills for surgery to the Plaintiff during August, 1990; (f) each of the parties claims for reimbursement of expenses incurred for boat repairs; and (g) reciprocal claims for attorney's fees.

2. The parties were married July 19, 1986. They lived together for approximately three months prior to their marriage. They separated about mid-January, 1989. The pleadings in this case were filed on June 16, 1989.

3. Defendant was divorced from his prior wife in June, 1986. Defendant's business had failed and he was winding up his business prior to this time. He had problems with the Internal Revenue Service, and they executed on everything of value. He had already gone through bankruptcy during 1985.

4. Plaintiff was living in her own home with her daughters from a prior marriage when a divorce suit commenced with the Defendant. She was a self-employed cosmetologist.

5. 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 with [redacted] & Son [redacted] 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.

6. In 1987 Defendant brought in earnings of approximately [redacted] from her business. Defendant earned approximately \$24,000 in 1988 while Plaintiff earned approximately \$4,200 from her business. Joint returns were not filed in 1987 and Plaintiff had a net income from her business for that year of approximately \$8,800.

7. [redacted] purchased real estate at [redacted] West, West Valley City, Utah in 1992 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 \$[redacted]. The home has a current mortgage of approximately \$47,000. During the marriage, the home was repainted, carpeted, the [redacted] 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 and kitchen. Materials and outside labor cost approximately \$6,000, most of which came from marital funds. The greater part of the labor was performed by the Defendant, and a small portion of the labor was hired, and 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 has depreciated over the past several years, the improvements 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.

8. The Plaintiff purchased a 22 1/2 1973 Reinell boat from Bruce Green on July 2, 1986. She paid \$4,500 as a down payment from her own funds and borrowed the balance from First Security Bank of Utah. Defendant claims he contributed approximately \$1,200 to the purchase price through work he performed on a Bayliner boat owned by Mike Peterson, which the parties used for a few months prior to the purchase of the Reinell boat. He also claimed entitlement for storage charges for the boat. There is no evidence that he ever billed Plaintiff for those charges or that he pursued collection of those charges. He was

living with Plaintiff rent free at the time and was perhaps otherwise compensated. A claim asserted several years later during divorce proceedings has a hollow ring thereto, and the Court finds the claim lacking in merit.

9. The Reinell boat was taken by the Defendant at the time of the separation of the parties and was stored out in the open. He did not use the boat while he had it in his possession. The parties appeared before the Commissioner on July 18, 1990, and Plaintiff was awarded possession of the boat as a result of that hearing. After obtaining possession, Plaintiff expended \$2,949.41 for repairs for which she seeks recovery from Defendant. She also asserts that two marine batteries were missing, as well as a stainless steel propeller, oars, an anchor and ropes. She sold the boat without notice to and without the consent of the Defendant. There was no substantial evidence of the condition of the boat when Defendant took possession of it. The boat was covered while it was in the control and possession of the Defendant. What might have been considered ordinary wear and tear as opposed to damage attributable to Defendant, was not given any reasonable explanation. There was no evidence deduced as to when and where the items came up missing, or as to the value of those items. Plaintiff asserted a \$700 loss on the sale, but whether the transaction was arms length or what the market value of the boat

was, is likewise, not provided by the record. Plaintiff's claim for reimbursement for repairs is similar to Defendant's claim, and is likewise, found to be without merit. The record does not support a finding that Defendant is entitled to any interest in the boat or the proceeds from the sale.

10. On or about September 26, 1987, Defendant purchased two ladies' rings from Morgan Jewelers, one costing \$1,575 and the other, a ladies' solitaire ring, costing \$2,538. Defendant incurred charges on his charge account in the total amount of \$4,327.03. Shortly before Christmas 1987, Defendant gave the rings to the Plaintiff as gifts. When the parties separated in mid-January, 1989, Defendant was still paying on the rings. Plaintiff is awarded the rings, subject to her repaying the Defendant for all documented payments he made on the rings after the separation in mid-January, 1989. Defendant may continue to hold a possessory lien on the rings until all amounts provided herein are fully satisfied. The Defendant has removed the original stones from the rings and the stones are to be restored to the rings, and Defendant is to obtain certification from Morgan Jewelers that the rings are as originally delivered to him in September, 1987.

11. At the time of separation, the Defendant was employed by Salt Lake City Corporation. He had medical and dental coverage on Plaintiff which cost him \$17.50 per pay period.

On or about January 14, 1989, Defendant hit Plaintiff in the jaw, fracturing the right mandible. The insurance covered the treatment of the multiple fractures, except for \$65.75, which Defendant acknowledges he owes. Defendant should be ordered to pay for the uncovered portion of the treatment in the amount of \$65.75.

12. Defendant caused Plaintiff's insurance coverage to be terminated effective August 12, 1990, several months before the divorce was granted in this matter. There were no controlling Temporary Orders concerning health care coverage. A pre-trial was held before Commissioner Peuler on November 2, 1989. The Minute Entry is silent on the issue of insurance. A second pre-trial was held before the undersigned judge on February 1, 1990. The Plaintiff testified that the Defendant mentioned that he had taken her off of the insurance coverage, and the Court admonished Defendant to reinstate the coverage. The Minute Entry does not reflect any details of the pre-trial conference. Apparently, no requests for an Order was made, and no Order was entered by the Court on the issue of insurance. The Court has no independent recollection thereof.

During July, 1990, Plaintiff consulted with a physician about treatment for a deviated septum and a ventral hernia. One physician obtained pre-approval from the Utah Public Employee's Health Program. On August 15, 1990, surgical correction of the two

conditions took place, and the Utah Public Employee's Health Program has declined payment for lack of coverage. The Defendant terminated health care coverage for the Plaintiff through the Utah Public Employees Health Program on August 15, 1990, the date of the surgery. The termination of the coverage was retroactive to August 1, 1990. The total medical bills incurred for the surgery were in the amount of \$4,690.09. Plaintiff seeks recovery of this amount from the Defendant. Since there was no Order regarding health insurance, the Court finds it is reasonable that these obligations be treated as any other marital obligation. Accordingly, the Court finds that each of the parties should pay one-half of the medical costs, plus accruing interest thereon, and one-half of any fees or costs taxed against the parties for any collection or legal actions, and hold the Plaintiff harmless therefrom.

13. Both parties seek an award of attorney's fees herein. Plaintiff asserts that she should be awarded one-half of the fee, which ultimately will be around \$5,500. Defendant, on the other hand, claims entitlement to a fee of just over \$2,500. Financial statements herein indicated Plaintiff had a monthly income of approximately \$1,550, while the Defendant had a monthly income of \$1,793. Neither party has demonstrated a need for an award of fees.

Both parties, in concert with their attorneys, have contributed to the inability to settle. Generally, Plaintiff, because of the nature of the disputed assets as described above, wanted everything. On the other hand, Defendant felt justified in wanting something. The dropping of health and medical coverage on Plaintiff ended any possibility of settlement. Each party has paid a high price. On balance, each party should bear their own attorney's fees and costs.

#### CONCLUSIONS OF LAW

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

1. A Supplemental Decree of Divorce should be entered in this matter reflecting the Findings of the Court set out above.

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

3. The Plaintiff should 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 should be denied any additional claims they have made for recovery on losses and repairs made to said boat.

4. The Plaintiff should be awarded both rings purchased by the Defendant from Morgan Jewelers on or about September 26,

1987. However, Plaintiff should be 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 should be ordered to hold a possessory lien on the rings until the payments provided herein are fully satisfied. The Defendant should be ordered to 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 should 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 should be ordered to 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 should be ordered to pay one-half of any fees or costs taxed against the parties through any collection or legal actions, and the Defendant should be ordered to hold the Plaintiff harmless therefrom.

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

DATED this \_\_\_\_ day of January, 1992.

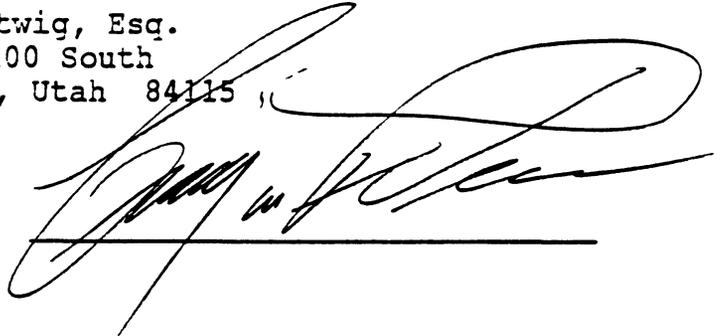
BY THE COURT:

\_\_\_\_\_  
District Court Judge

CERTIFICATE OF HAND-DELIVERY

I hereby certify that I caused to be hand-delivered, a true and correct copy of the foregoing, FINDINGS OF FACT AND CONCLUSIONS OF LAW, this 3<sup>d</sup> day of January, 1992, to:

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



\_\_\_\_\_  
A large, stylized handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to read 'David R. Hartwig'.