

1992

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

Utah Supreme Court

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

-----o000o-----
LYNETTE MANSKE TORRES,)
Plaintiff/Appellant,)
vs.)
JOHN MARTIN TORRES,)
Defendant/Appellee.)
-----o000o-----

BRIEF OF APPELLEE

Case No. 920101-CA
Civil No. 884902184 DA
Priority 16

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH
HONORABLE KENNETH RIGTRUP
DISTRICT COURT JUDGE

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STATEMENT OF JURISDICTION

Jurisdiction over this matter is placed with the Court of Appeals pursuant to §78-2a-3(2)(i), Utah Code Annot. (1953, as amended).

STATEMENT OF ISSUES

1. This trial court did not abuse its discretion by awarding Defendant a lien against Plaintiff's residence based upon his contributions to, and improvements of that residence. The appropriate standard of review to be utilized herein is whether there was a misunderstanding or misapplication of the law resulting in a substantial and prejudicial error, the evidence clearly preponderated against the findings, or such a serious inequity has resulted as to manifest a clear abuse of discretion. *Watson v. Watson*, ___ P.2d ___, 190 Utah Adv. Rep. 42, 44, (Utah App.1992), citing *Naranjo v. Naranjo*, 751 P.2d 1144, 1146 (Utah App. 1988).

2. The trial court did not abuse its discretion in requiring Plaintiff to repay Defendant for the maintenance payments he made on two rings, which were awarded to Plaintiff, during the pendency of this action. The appropriate standard of review is the abuse of discretion standard cited above. Further, the exceptions to the general rule concerning gifts and inheritances,

as set forth in *Mortensen v. Mortensen*, 760 P.2d 304 (Utah, 1988) support Defendant's stance on this issue.

3. The trial court did not abuse its discretion by finding that medical expenses incurred by Plaintiff during the pendency of the action were marital debts subject to distribution between the parties. Again, the abuse of discretion standard, as cited above, applies to this issue.

4. The trial court did not abuse its discretion by having each party be responsible for his or her own attorney fees where the trial court found that both parties contributed significantly to their inability to settle this matter. The standard to be applied in review of this issue is the financial need of the receiving spouse, the ability of the other spouse to pay, and the reasonableness of fees. *Crockett v. Crockett*, ___ P. 2d at ___, 193 Utah Adv. Rep. at 18, citing *Bell v. Bell*, 810 P. 2d 489, 493 (Utah App., 1991), and the abuse of discretion standard.

DETERMINATIVE STATUTES

Defendant/Appellee submits to this court that §30-3-5(1), Utah Code Annot. (1953, as amended), is determinative of the issues presented in this case. That statute, in pertinent part states:

When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property debts or obligations, and parties.

STATEMENT OF THE CASE

Plaintiff filed an action for divorce in the Third District Court. On January 16, 1991, the trial court bifurcated the proceedings and granted Plaintiff a decree of divorce. All financial issues were reserved for trial. Trial was held on July 31, 1991 and August 6, 1991. A supplemental decree of divorce was entered as a result thereof, and Plaintiff appealed the supplemental findings of fact and supplemental decree of divorce.

STATEMENT OF RELEVANT FACTS

1. Plaintiff filed for divorce seeking award equitable division of joint property. Record, at 2-5.

2. Defendant answered and placed several matters in issue, to wit: improvements to premarital property and joint property.

Record, at 8-10.

3. A pretrial was scheduled for hearing on November 2, 1989, before Commissioner Peuler. Record, at 20-22.

4. Plaintiff, along with her financial declaration, filed an offer of settlement wherein she retained all of her premarital interests and all of the marital property with Defendant taking only that which he held prior to the marriage. Record at 19.

5. The Commissioner recommended that the house be appraised and equity split, Plaintiff to be awarded the boat, each party to be awarded one ring and split the debts equally. Record at 22.

6. A pretrial was held before the trial judge on February 1, 1990, and the record is silent concerning that pretrial. Record at 30.

7. On July 18, 1990, Plaintiff was awarded the temporary use and possession of the boat in dispute at a hearing before Commissioner Peuler. Record at 67-68. Plaintiff sold this boat without the knowledge or consent of Defendant. Record at 145.

8. On January 16, 1991, the trial judge bifurcated this matter. Plaintiff was granted a decree of divorce and all financial issues were reserved for trial. Record, at 88.

9. On July 31, 1991, and August 6, 1991, trial was held on the issues of the interest claimed by Defendant in Plaintiff's

home; the interest claimed by Defendant in the boat; the entitlement to two diamond rings; responsibility for outstanding medical bills relating to treatment of Plaintiff's jaw; responsibility for outstanding medical bill relating to Plaintiff's surgery in August, 1990; Plaintiff's claims for reimbursement for expenses for repairs to the boat; and reciprocal claims for attorney's fees. Record at 99 - 100, and 103-104.

10. The court issued a memorandum decision on November 5, 1991. Record at 103-112. (A copy of the memorandum decision is included herein at appendix "A").

12. A supplemental decree of divorce was signed and entered on January 21, 1992. Record at 174-176. (A copy of the supplemental findings of fact, conclusions at law and supplemental decree of divorce is included herein at appendix "A".)

13. Pursuant to the supplemental decree, Defendant filed verification of payments on the two diamond rings from the date of separation on in an amount of \$4,632.50. Record at 118.

14. Plaintiff filed her notice of appeal on or about February 11, 1992. Record at 178-179.

SUMMARY OF THE ARGUMENT

1. Defendant reported the vast majority of the parties income during the years of the marriage and contributed financially and through his labor and skill to the improvement of

Plaintiff's house. It was equitable that Defendant receive some portion of that increased value and the trial court awarded him a lien in an amount of \$4,000 against Plaintiff's house even though the debt on the house exceeded the market value. These improvements increased the value of Plaintiff's house by \$12,000. The trial court did not abuse its discretion in making this award to Defendant.

2. The trial court awarded Plaintiff the two diamond rings subject to her reimbursing Defendant for his documented payments on those rings from the date of the separation of the parties. Defendant was awarded a possessory lien on those rings for that amount. Defendant documented that he paid the sum of \$4,632.50 on those rings from the time the parties separated. Under existing case law and upon well settled legal principals, it was within the court's discretion to award Defendant for the contributions he made in the enhancement, maintenance and protection of those rings.

3. Defendant had injured Plaintiff's jaw about the time of the parties' separation. Defendant admitted and assumed full liability for the outstanding medical costs of treatment for that injury. Defendant agreed to continue carrying Plaintiff on his health insurance during the pendency of the action for the purpose of continuing treatment for the jaw for a period of eighteen

months, the period of time Plaintiff indicated was required to ensure no further treatment was required. Defendant being advised of no further treatment being performed or required for the jaw and at the end of approximately twenty months terminated the insurance coverage for Plaintiff. Coincidental in time and without notice to or knowledge of Defendant, Plaintiff scheduled unrelated surgeries and incurred additional debts due to the lack of insurance. Since there were no orders on this matter, and the record was silent on the issue of insurance coverage for the Plaintiff, the trial court found that the debts for the surgery were marital debts and allocated them equally as between the parties. The trial court did not abuse its discretion in that finding and allocation.

4. Plaintiff sought an award of attorney fees. Defendant testified that he thought each should pay their own fees. The court found that each party contributed significantly to the inability to settle and that neither party demonstrated a need for an award of attorney fees. The trial court did not abuse its discretion in so finding that each party should be responsible for his or her own fees.

ARGUMENT

I. There was no abuse of discretion in the trial court's award to Defendant of an equitable lien in the Plaintiff's Residence.

The trial court awarded the Defendant a four-thousand dollar equitable lien in Plaintiff's residence. Supplemental decree, ¶2, Record at 175. This award was based upon the trial court's findings that

"[d]uring the marriage, the home was repainted, 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 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.

Supplemental Findings of Fact at ¶7, Record at 143.

All of these improvements had been done in a relatively short period of time as the parties had married on July 19, 1986, and separated about mid-January, 1989. Supplemental Findings of Fact at ¶2, Record at 142. The finances of the parties were such that Defendant supplied the vast majority of money during the marriage. In 1986, Plaintiff sustained an operating loss of \$3,800 and Defendant had some income, but not enough to justify the filing of a joint tax return, having just started employment.

Supplemental Findings of Fact at ¶5, Record at 143. In 1987, Defendant earned \$26,500 with Plaintiff declaring income of \$787, and the year 1988 showed Defendant to have earned \$24,000 and Plaintiff reporting \$4,200. *Id.*

Trial courts may exercise broad discretion in divorce matters and in the adjustments of the financial interests of the parties thereto. *Whitehead v. Whitehead*, ___ P.2d ___, 193 Utah Adv. Rep. 8, 9 (Utah App. 1992), *Crockett v. Crockett*, ___ P.2d ___, 193 Utah Adv. Rep 16, 17 (Utah App. 1992), and §30-3-5 Utah Code Annot. (1953, as amended). This court has indicated that it will "afford the trial court 'considerable latitude in adjusting financial and property interests, and its actions are entitled to a presumption of validity.'" *Watson v. Watson*, ___ P.2d ___, 190 Utah Adv. Rep. 42, 44, (Utah App.1992), citing *Naranjo v. Naranjo*, 751 P.2d 144, 1146 (Utah App. 1988).

This court then, will make changes "in a trial court's property division determination in a divorce action 'only if there was a misunderstanding or misapplication of the law resulting in a substantial and prejudicial error, the evidence clearly preponderated against the findings, or such a serious inequity has resulted as to manifest a clear abuse of discretion.'" *Id.* Defendant respectfully asserts that none of these contingencies exists and that the distribution of the trial court should was a

proper application of the law supported by the evidence and was not an abuse of discretion.

"[T]he overriding consideration is that the ultimate division be equitable[.]" *Watson*, 190 Utah Adv. Rep. at 45, (citations omitted). Defendant asserts that this division was equitable based upon the record of his financial and personal labor contributions to the marriage and the Plaintiff's home improvements.

The Plaintiff has come before this court asserting that Defendant paid no rent, made none of the mortgage payments, and made no direct monetary contributions toward her home. Plaintiff's brief at 12-14. Yet Plaintiff admits in her brief that all materials were paid for from joint funds. *Ibid*, at 12. She further admitted during trial that Defendant made direct financial contributions to the household and expenses - approximately one-half of his paychecks and that he had, on at least one occasion actually made a mortgage payment. Transcript at 58-60.

As to Plaintiff's claims that Defendant paid her no rent, the transcript reveals that Plaintiff was married prior to the instant marriage and did not expect rent from her prior husband, and that she allowed Defendant to live with her without expectations of rent knowing that Defendant had no funds. Transcript at 96-97. In fact, she denied that Defendant should have paid her

any rent. *Id.*

Defendant testified that he surrendered his paychecks to Plaintiff. Transcript, 155-157, and 198-199. Defendant did this because he did not have a bank account due to his bankruptcy which occurred immediately prior to his moving in with Plaintiff. *Id.* He did receive some of those funds back for pocket money, but he also had no bills or obligations to pay due to the prior bankruptcy. *Id.*

Further Defendant provided the labor and knowledge in completing the extensive remodeling of the house. Transcript at 175-179. The expertise he supplied was learned from experience in building houses in the past. *Id.*

The trial court found the reasonable value for all of the home improvements to have been \$12,000. Supplemental Findings of Fact, ¶7, Record at 143. The trial court further found that even though there has been depreciation of the home over the past several years, the improvements added value to the property. *Id.* (emphasis added).

The incomes of the parties during the period of time they were together was also reviewed by the court. See, Supplemental Findings of Fact ¶¶4-5, Record at 143. The vast majority of declared income came from the Defendant and Plaintiff all but admitted this fact indicating that the tax documents which were

admitted as evidence spoke for themselves and that one might reasonably well inquire as to how Plaintiff could have made the house payments in the range of \$600 per month, yet alone paying for the improvements. Transcript at 141-142, and 198-199.

Defendant has not been able to raise any Utah cases which square directly with the issue of division of the value of improvements to real property in light of decreasing market values and the lack of present equity in the real property. Therefore Defendant is required to argue by analogy and compare the instant case to other cases setting forth general principles of equity.

Watson, and Roberts v. Roberts, ___ P. 2d ___, 188 Utah Adv. Rep. 26 (Utah App. 1992) are recent cases from this court which can instruct and lead us on this issue. *Watson* involved the issues of corporate property and premarital property being awarded under the trial court's equitable powers in a divorce.

Mr. Wilson was an employee of his own solely owned corporation and the corporation held title to a BMW automobile. *Watson* ___ P. 2d at ___, 190 Utah Adv. Rep. at 44-45. This court held that the trial court did not abuse its discretion in setting aside the corporate entity under the alter ego doctrine and awarding Mrs. Watson that BMW automobile in light of the facts that Mrs. Watson had been the principal operator of that car and that Mr. Watson was awarded the other three automobiles held by

those parties. *Watson* ___ P. 2d at ___, 190 Utah Adv. Rep. at 45. In fact, it would have been inequitable had the trial court done otherwise. *Id.*

In addressing the issue of premarital property in *Watson*, this court, citing *Burke v. Burke*, 733 P. 2d 133, 135 (Utah, 1987), stated

"In appropriate circumstances, one spouse may be awarded property which the other spouse brought in to the marriage. The rationale behind this exception to the general rule is that '[m]arital property' encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived, ... and that the trial court may, in the exercise of its broad discretion, divide the property equitably regardless of its source or time of acquisition.

Watson, ___ P. 2d at ___, 190 Utah Adv. Rep. at 45, (citations omitted). This court went on indicating that it has "held that in dividing property between parties in a divorce action, 'the overriding consideration is that the ultimate division be equitable.'" *Id.*, (citations omitted).

The property in question in *Watson* consisted of household goods, tools and an interest in a trailer. *Id.* The trial court took into consideration the award of other premarital property of Mrs. Watson to Mr. Watson in making its distribution, and this court upheld that equitable distribution.

Applying the principles of *Watson* to the instant case indi-

cates that the trial court's distribution was proper and should be upheld. Defendant made extensive personal and cash contributions to the household and to the improvement of the house itself. Transcript at 55, 58-60, 155-157, 175-179, and 198-199, and Supplemental Findings of Fact ¶7, Record at 143-144. The reported monetary contributions were mainly from the Defendant. Transcript 134-136, 141-142, and Supplemental Findings of Fact ¶¶5-6, Record at 143. There were few other assets of the marriage to be distributed and those other assets were awarded to Plaintiff. Supplemental Findings of Fact ¶¶1, and 8-10, Record at 142, and 144-146. Hence it would have been inequitable to grant Defendant nothing from the marriage or from the contributions he made to the house during that marriage.

Roberts involved the assignment of assets and liabilities of the marital estate which resulted in a disparity as between the parties, particularly assignment of debts involving the property in the marital estate. *Roberts*, ___ P. 2d at ___, 188 Utah Adv. Rep. at 29. In holding that the trial court was well within the limits this court indicated that one should take "the value of all the parties' assets and liabilities as a whole...". *Id.*

In the instant case, the trial court had before it the entirety of the parties assets and liabilities. It gave Defendant an equitable lien in an amount of one-third of the value the

court placed on the improvements to the house knowing that Plaintiff had a liability on that house. Supplemental Findings of Fact, ¶7. The parties liabilities were divided equitably, as they were in *Roberts*.

Davis v. Davis, 655 P. 2d 672 (Utah, 1982) and *Stephens v. Stephens*, 728 P. 2d 991 (Utah, 1986), are two slightly older cases which approach the issues of the instant case. Both involve improvements to a home and an award of equity in the home for those improvements.

Davis involved a home owned by Mrs. Davis from before the marriage to Mr. Davis. *Davis*, 655 P. 2d at 672. The parties made substantial improvements to the home. *Id.* Also, Mr. Davis held real property in New Mexico, which was purchased before the marriage and three-quarters of the purchase price was paid before the marriage. *Davis*, 655 P. 2d at 673. The trial court found that the home had increased in equity during the marriage, and would probably continue to increase in equity after the divorce. *Id.* The trial court awarded Mr. Davis a portion of the existing and future equities in the home. *Id.* Mrs. Davis was awarded a portion of the value of the land in New Mexico. *Id.*

The Utah Supreme court affirmed the trial court's division of the property. *Id.* It based that affirmation upon the numerous contributions to the respective properties made by the par-

ties. *Id.*

Applying *Davis* to the instant matter, and under the facts of the instant case, it is clear that the Defendant herein contributed to the increased value of Plaintiff's home. As in *Davis*, the Defendant in this case should be awarded something from his investments and the allocation by the court below should be affirmed.

Stephens involved an order requiring that Plaintiff pay one-half of the costs of capital improvements to the home. *Stephens*, 758 P. 2d at 993. The Utah Supreme Court held that the trial court "was well within its discretion to require plaintiff to assume part of the burden of capital improvement expenditures. Defendant, on her limited income, could ill afford to shoulder alone all improvements, and the benefits to plaintiff upon the sale of the home are too obvious to merit further discussion." *Id.* Just as in *Stephens*, Plaintiff herein, on her limited income could ill afford to shoulder alone all of the improvements and would reap the benefits of those improvements.

Plaintiff has cited and analyzed *Jackson v. Jackson*, 617 P. 2d 338, (Utah, 1980), in support of her proposition that the trial court had acted contrary to equitable principals in awarding Defendant the lien on the home. Plaintiff's brief at 13-14. *Jackson* involved an appeal from the distribution of assets and

liabilities to one party. The other party sought an award of the entire equity in the home and certain other property free and clear of liens and encumbrances. The Court, in upholding the trial court's distribution, indicated that where a party is required to pay all debts on property, with the debts exceeding the value, it is fair that said party should also receive the majority of the property.

Jackson indicates that the majority of the property should go with the liabilities. It does not indicate that all of the property must go with the debts, nor does it prohibit a different allocation.

In the instant case, Defendant made substantial contributions toward the improvements of the home of the Plaintiff. He cannot take those improvements out of the home without further impairing the value of the home or of the improvements themselves. The trial court awarded Defendant only a portion of the value of the improvements, nothing more.

Defendant made contributions which increased the value of the home. Supplemental Findings of Fact, ¶7, Record at 144. Had those improvements not been made, the disparity between the mortgage and market price would have been worse, and Plaintiff will be the one who is the recipient of value of the improvements in any event. The lien granted by the trial court was well

within its bounds of discretion and this court should affirm the trial court's findings on this issue.

II. The trial court's award of the rings to Plaintiff subject to a possessory lien in favor of Defendant and against Plaintiff for the amounts Defendant paid for those rings since the parties' separation is appropriate and equitable under controlling law.

On or about September 26, 1987, Defendant purchased two ladies' rings from Morgan Jewelers and incurred charges on his own account in the total amount of \$4,327.03. Supplemental Findings of Fact ¶10. There was dispute at trial as to whether this purchase was for investment purposes, as claimed by Defendant, or as a gift as claimed by Plaintiff. The trial court found that shortly before Christmas, 1987, Defendant gifted those two rings to Plaintiff. *Id.* When the parties separated in mid-January, 1989, Defendant was still paying on those rings, as he continued to do through the date of trial of this matter. Supplemental Findings of Fact ¶10, and Transcript 173-174. The trial court awarded the rings to Plaintiff "subject to her repaying the Defendant for all documented payments he made on the rings after the separation in Mid-January, 1989." *Id.* Further, the trial court found that "Defendant may continue to hold a possessory lien on the rings until all amounts provided herein

are fully satisfied." *Id.*

Plaintiff asserts in her brief that the court abused its discretion in requiring Plaintiff to pay for these rings which the court found were gifted to her by Defendant. This assertion is erroneous. The trial court found that Plaintiff should repay Defendant for "all documented payments he made on the rings after the separation in Mid-January, 1989." Supplemental Findings of Fact ¶10. The trial court issued an order based upon this finding. Supplemental Decree of Divorce, ¶4.

Mortensen v. Mortensen, 760 P.2d 304 (Utah, 1988), discusses the issue of allocation of gifts in a divorce setting. That case sets forth the general rule that property acquired by one spouse by way of gift or inheritance should be awarded to that spouse. *Mortensen*, 760 P.2d at 308. That general rule still is recognized. See, *Watson*, ___ P. 2d at ___, 190 Utah Adv. Rep. at 45.

There are exceptions to that general rule. See *Watson* as discussed in Section I, *supra*. *Mortensen* itself enumerates two exceptions:

"(1) the other spouse has by his or her efforts or expense 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 or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse."

Mortensen, 760 P. 2d at 308. (It should be noted that Defendant

has closely reviewed page 308 of that opinion, which is cited by Plaintiff in her brief and nowhere are these exceptions set forth as quoted by Plaintiff in her brief at page 15. The words "by his or her efforts or expense" were omitted by Plaintiff when she put forward this section of the citation in quotations in her brief.)

Plaintiff makes the bald assertion that the exceptions noted in *Mortensen* do not apply in the instant case. Plaintiff, in sole support of that assertion cites only the fact that the court found that there was a gift. Defendant respectfully suggests that the *Mortensen* exceptions do apply in the instant matter, particularly exception number one.

At trial, Plaintiff admitted that Defendant purchased the rings in his name. Transcript, at 120. Defendant also admits that she made only one payment on that account. *Id.* Yet Defendant is the one who has maintained payments on that account so as to avoid repossession or loss of the rings. Defendant documented payments of \$4,632.50 on those rings since the separation of the parties. Record at 118. In other words, Defendant, has by his efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in those rings. *See, Mortensen, 760 P. 2d at 308.*

Defendant did maintain and protect these rings. In fact,

Plaintiff was fearful that the rings could have been lost due to nonpayment. Transcript at 80. This fear of Plaintiff's then tacitly admits that Defendant did maintain these rings and protect them in order to keep them safely within the marital estate. Based on this, Plaintiff is admitting that the first exception set forth in *Mortensen* was met. Therefore the trial court's requirement of repayment of the contribution made by Defendant is just and equitable.

On this issue, Plaintiff also asserts that she should take the rings free and clear of the contributions made by Defendant because he has kept the rings in his possession. Defendant asserts that this action of his, keeping the rings in his possession, again proves that he, through his efforts maintained and protected that property, thereby acquiring an equitable interest in them. The record clearly shows that Plaintiff, upon acquiring the only other major asset in dispute, a 1973 Reinell boat, sold that boat without notice to and without the consent of the Defendant at a sale that was a questionable arms-length transaction. Supplemental Findings of Fact ¶9, Record at 145. That action of Plaintiff was a knowing alienation of a marital asset which was in dispute. It was done in disregard to the pending litigation and claims of Defendant therein.

Plaintiff's assertions on appeal contradict her position at

trial as illustrated by her testimony at trial. Plaintiff claims in her brief that the court is taking the gift and requiring her to pay for it. Yet her own testimony was that she was willing to take over the payments. Transcript at 80. If she was willing to take over the payments, then she was willing to do that which she is now complaining that the court is requiring her to do -- to pay for her gift.

In light of Plaintiff's testimony, and her alienation of property of the estate, it is estimably equitable for Plaintiff to pay Defendant for his documented payments on the rings. She admitted that she was willing to do so, and with the debt being in Defendant's name, the reimbursement of moneys paid guarantees the maintenance and preservation of the property.

Finally on this issue, Plaintiff asserts that somehow the trial court erred in not valuing the property at the time of divorce. Plaintiff's brief at 16. From Defendant's review of the record and transcript, the issue of the value of these rings was never raised at the trial court level. The parties never disputed the value. The only disputes set before the trial court regarding this issue were the award of these rings, the assignment of the remaining debt thereon, and Defendant's claim of an interest due to his maintenance and preservation of this particular asset of the marriage.

The apportionment of the rings and the debt thereon was well within the discretion of the trial court and equitable in the circumstances. This court should affirm the trial court on this issue.

III. The trial court's allocation of the medical expenses incurred by Plaintiff during the period between the date of the parties' separation and date of trial was proper.

At trial, another of the issues raised by Plaintiff was the assignment of responsibility for outstanding medical bills for surgical services to Plaintiff during August, 1990. Supplemental Findings of Fact ¶1, Record at 142. This issue was hotly debated before the trial court as there were claims and counterclaims. Yet it must be noted that there were no controlling temporary orders concerning health care coverage for Plaintiff despite Plaintiff's testimony that she had raised this issue at a pretrial conference on February 1, 1990, before the trial judge. Supplemental Findings of Fact ¶12, Record at 147. With this testimony before it, the trial court found that the minute entry from the mentioned pretrial conference did not reflect any details of that conference, no request for an order was made and no order was entered by the trial court on this issue. *Id.* Record at 30.

The basis of the dispute on this issue is the content and extent of an oral agreement between the parties at the time of the above-mentioned pretrial. Defendant had, on or about January 14, 1989, hit Plaintiff in the jaw causing a fracture. Supplemental Findings of Fact ¶11, and Transcript, at 157. Defendant acknowledged¹ financial responsibility for medical treatment of the fracture. Supplemental Findings of Fact ¶11 and Transcript, at 158.

At the time of the February 1, 1990, pretrial, Plaintiff had learned that Defendant had terminated the insurance and that Plaintiff had instructed her counsel to have Defendant continue health insurance coverage during the pendency of the divorce action. Transcript, at 82-84. There was discussion on this matter and the insurance was reinstated by Defendant based upon representations that the insurance was necessary solely for the purpose of covering any additional treatment needed for the fractured jaw and that the coverage was needed for only a period of eighteen months from the date of injury, January 14, 1989. Transcript, at 158-159, and 184-187. The transcript does not reflect that Plaintiff disputed these representations as conditions for the insurance.

Plaintiff's surgery occurred on August 15, 1990, and consisted of correction of a deviated septum and a ventral hernia.

Supplemental Findings of Fact ¶12, and Transcript, at 38, 45-46. These surgeries were admitted by Plaintiff' counsel to have been for conditions not related to the jaw fracture. Transcript, at 45. In fact, there had been no claims for treatment of the jaw fracture since February, 1989, nor notice that further treatment of that fracture was required or anticipated. Transcript, at 35-36.

The two surgeries required pre-authorization by the insurance carrier and coverage at the time of service. Transcript, at 46. Plaintiff did not check to ensure that the insurance coverage was in effect at the time of the surgeries despite knowing that it had to be in place when the service was rendered and having knowledge that at one time prior to this time Defendant had terminated her coverage. Transcript, at 124-126. She simply went forward with the surgeries.

Defendant did terminate the insurance, pursuant to his understanding of the agreement of the parties. Transcript, at 164, and 186-187. He had no knowledge of the pending surgeries when he terminated the insurance. *Id.*

The trial court, having all of this testimony before it, and being in the unique situation of being able to assess the witnesses credibility, found that these obligations should "be treated as any other marital obligation." Supplemental Findings

of Fact ¶12. As argued hereinabove on the other issues raised, the trial court is granted broad discretion in adjusting the financial interests of a party and that discretion will be presumed correct by this court absent "manifest injustice or inequity that indicates a clear abuse of ... discretion." *Crockett*, ___ P. 2d at ___, 193 Utah Adv. Rep. at 18, *Whitehead*, ___ P. 2d at ___, 193 Utah Adv. Rep. at 9. See also, *Mortensen*, 760 P. 2d at 305-306, *Roberts*, ___ P. 2d at ___, 188 Utah Adv. Rep. at 29, and *Watson*, ___ P. 2d at ___, 190 Utah Adv. Rep. at 46.

Hence the trial court's finding in the instant case should remain undisturbed. Defendant, in his testimony, denied knowledge of the pending surgeries. Plaintiff did not refute that denial at trial. Further, Defendant did everything he could to attempt reinstatement of benefits with retroactive coverage. Transcript, at 164-165.

The allocation of this particular debt includes in it, costs and fees assessed against the parties for any collection action. Supplemental Findings of Fact ¶12. Yet Plaintiff is the party who allowed this debt to go to collection, to default in fact, before doing anything to mitigate the damages. Transcript, at 122-124.

The court found no agreement of the parties, despite Plaintiff's claims of prior problems during the pendency of the ac-

tion. No orders were entered on this issue despite Plaintiff's testimony that she discussed the need for the insurance with her counsel well before this incident. Defendant had no knowledge of these surgeries and carried out the agreement as he understood it. Plaintiff allowed the bills to go to default before taking steps to mitigate damages, and Defendant did what he could to reinstate the coverage making it retroactive.

Based upon these facts, the court made its finding that this debt "be treated as any other marital obligation." Plaintiff has not shown any manifest injustice or inequity indicating a clear abuse of discretion in the trial court's finding. That finding is reasonable and should be affirmed by this court.

IV. The trial court's allocation of attorney fees and costs is reasonable and proper based upon the ability of the parties to pay and their demonstrated need for an award of attorney fees.

Under § 30-3-3 Utah Code Annot. (1953, as amended), the trial court has discretion to award costs and attorney fees in divorce proceedings. "The trial court must base its decision to award attorney fees upon evidence of the financial need of the receiving spouse, the ability of the other spouse to pay, and the reasonableness of fees." *Crockett*, ___ P. 2d at ___, 193 Utah Adv. Rep. at 18, citing *Bell v. Bell*, 810 P. 2d 489, 493 (Utah

App., 1991), and *see*, *Whitehead*, ___ P. 2d at ___, 193 Utah Adv. Rep. at 11, *Roberts*, ___ P. 2d at ___, 188 Utah Adv. Rep. at 29, *Kerr v. Kerr*, 610 P. 2d 1380, 1384 (Utah, 1980), and *Munns v. Munns*, 790 P. 2d 116, 122-123 (Utah App., 1990). The decision to award attorney fees lies within the sound discretion of the trial court. *Id.* The standard to be applied here is again the abuse of discretion standard. *Id.*

The trial court in this matter found that Plaintiff had a monthly income of approximately \$1,550 and Defendant had a monthly income of \$1,793. Supplemental Findings of Fact ¶13. Plaintiff admitted that the parties' earned incomes were pretty much the same. Transcript, at 90. Based thereon, the trial court found that neither party demonstrated a need for an award of attorney fees. *Id.*

The trial court further found that both parties contributed to the inability to settle. *Id.* Plaintiff admitted that she would have settled on almost all issues up to the point in time when the surgery and medical insurance problem arose. Plaintiff's brief at 19. Transcript, at 91. The reasonable inference from this is that there was some issue upon which she was not willing to settle prior to this time.

The fact is that the trial court questioned Plaintiff about her willingness to settle. Transcript, at 142-143. Plaintiff

clearly indicated that as of the November 2, 1989, pretrial before Commissioner Peuler that she was not willing to accept the recommendations because Defendant was awarded one of the rings. Transcript, at 143.

The essence of that recommendation was that the home was to be appraised and any equity divided, Plaintiff was to be awarded the boat, each party awarded one ring and the debts to be divided equally. *Id.* This means that Defendant would have been awarded only one ring, as the situation of the equity in the home would have been essentially the same, if not worse than it was at time of trial. It also must be remembered that the only debt of the parties was that debt remaining on the rings, as the insurance incident had not yet occurred. Defendant was willing to accept this recommendation of the Commissioner and settle the case. Transcript, at 180. Defendant had attempted settlement a number of times. Transcript, at 200.

In other words, as the court so found, Plaintiff wanted everything. Transcript, at 13. See also, Plaintiff's offer of settlement, dated October 9, 1989, Record at 19. Defendant wanted something from the marriage, and was awarded some interests in the financial aspects of the marital estate.

In light of the finances of the parties, with the Defendant making some funds in 1986, earning \$26,500 in 1987, earning

\$24,000 in 1988, while Plaintiff had an operating loss of \$3,800, and reported incomes of \$787 and \$4,200 respectively, with the parties having paid out \$6,000 for home improvements, which improvements had a total value of \$12,000, and Defendant having carried the payments on the rings, in an amount of \$4,632.50, during the pendency of the action, Defendant was certainly justified in expecting to retain something from the marriage. Throughout, Plaintiff has demanded all of the assets, and only grudgingly indicated willingness to accept responsibility for the liabilities of the marital estate. This inflexible attitude significantly added to the impossibility of settlement.

Plaintiff's coercive tactics of demanding everything and then, when Defendant disputes it, crying out in the name of equity for an award of attorney fees is inequitable in itself. Equity requires a review of all assets and liabilities and an equitable distribution based thereon. Defendant was faced with only two options, surrender everything or go to trial.

The insurance incident did occur. But it was the Plaintiff who steadfastly indicated that the insurance incident closed all likelihood of settlement. Nowhere in the record does Plaintiff ever indicate that she would have settled after that incident, because she would not have.

It was Plaintiff's position then, as it is now, that she

should receive everything from the marriage. There was no compromise that was acceptable to Plaintiff. In order to preserve his claims and interests, Defendant has had no choice but to litigate the matter and defend his interests upon appeal.

Plaintiff's take all attitude, and wanting to charge Defendant with attorney fees for his good faith attempts to challenge that attitude contributed significantly to the necessity for trial. Based thereon, it would be grossly inequitable to require Defendant to pay anything toward Plaintiff's attorney fees and costs.

There has been no showing that the trial court abused its discretion in its award. The trial court should be affirmed.

CONCLUSION

This trial court did not abuse its discretion in any of its findings and order. All of the trial court's findings were well grounded in fact and based upon solid precedent and legal principals. The trial court's findings and decisions on all issues raised in this case should be affirmed.

Respectfully submitted this 30 day of September, 1992.

/s/
DAVID R. HARTWIG, ESQ.
Attorney for Defendant/Appellee

CERTIFICATE OF HAND-DELIVERY

On this 30 day of September, 1992, four true and correct
copies of the foregoing BRIEF OF APPELLEE was hand-delivered, to:

Craig M. Peterson
LITTLEFIELD & PETERSON
426 South 500 East
Salt Lake City, Utah 84102

Attorney for Plaintiff

/s/

APPENDIX "A"

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

LYNNETTE MANSKE TORRES,	:	MEMORANDUM DECISION
Plaintiff,	:	CIVIL NO. 894902184
vs.	:	
JOHN MARTIN TORRES,	:	
Defendant.	:	

The trial herein commenced July 31, 1991 and concluded August 6, 1991. Witnesses were sworn and testified. A large number of exhibits were offered and were received.

At a scheduling conference herein on January 16, 1991 the issues were bifurcated. Plaintiff was granted a divorce, which was entered by the Court February 4, 1991. All other issues were reserved for trial.

Issues remaining for disposition at trial, were:

1. Interest claimed by defendant in plaintiff's home;
2. Interest claimed by defendant in 1973 Reinell boat;
3. The entitlement to two diamond rings;
4. Responsibility for outstanding medical bills of \$65.75 relating to treatment of plaintiff's jaw;

5. Responsibility for outstanding medical bills relating to plaintiff's surgery in August 1990;

6. Plaintiff's claim for reimbursement for expenses incurred for boat repairs; and

7. Reciprocal claim for attorney's fees.

The Court has considered the testimony and evaluated the exhibits. Based thereon, the Court makes the following findings and rulings:

1. The parties were married July 19, 1986. They lived together for approximately three months prior thereto. They separated around mid-January 1989. This divorce case was filed June 16, 1989.

2. 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 had executed on everything of value. He had gone through bankruptcy during 1985.

2. Plaintiff was living in her own home with her daughters from a prior marriage when her relationship commenced with defendant. She was a self-employed cosmetologist.

3. 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 \$3,800.00 in her business for that year. Defendant started employment for C.R. England & Son 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.

4. In 1987, defendant brought in earnings of approximately \$26,500.00, while plaintiff reported \$787.00 income from her business. Defendant earned approximately \$24,000.00 in 1988, while plaintiff earned approximately \$4,200.00 from her business. Joint returns were not filed in 1989, and plaintiff had net earned income from her business for that year of approximately \$8,800.00.

5. Plaintiff purchased the twin home at 3773 South 352 West, West Valley City, in which defendant claims an interest in these proceedings, in 1982 for approximately \$52,000.00. As of May 13, 1991, the value thereof was appraised at \$37,000.00. It has a current mortgage thereon of approximately \$47,000.00. During the marriage, the home was repainted, recarpeted, the fireplace was removed and refinished, the basement was finished, including finishing a bath, cedar was

installed in the closet, a banister was installed down the stairway, the back yard was completed and a cement patio was installed. Also, ceramic tile was installed in the entry and kitchen. The materials and outside labor cost approximately \$6,000.00, most of which came from marital funds. The greater part of the labor was performed by defendant, though 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 \$12,000.00. Even though the home had depreciated over the past several years, the improvements added value to the property. It would be reasonable for defendant to be awarded \$4,000.00 as the reasonable value of his contributions thereto.

6. Plaintiff purchased a 22-1/2 foot 1973 Reinell boat from Bruce Green on July 2, 1986. She paid \$4,500.00 down from her own funds, and borrowed the balance from First Security Bank of Utah, N.A. Defendant claims he contributed approximately \$1,200.00 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. Also, he claimed entitlement for storage charges for storing the boat. There is no evidence that he ever billed

plaintiff for those charges, or that he pursued collection thereof. 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.

The Reinell boat was taken by 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. The parties appeared before the Commissioner July 18, 1990, and plaintiff secured possession of the boat as a result of that hearing. Thereafter, plaintiff expended \$2,849.41 for repairs, for which she seeks recovery thereof from defendant. Also, she asserts that two marine batteries were missing, as well as a stainless steel propeller, oars, anchor and ropes. She then sold the boat without notice to and without the consent of defendant. There was no substantial evidence of the condition of the boat when defendant took possession thereof. It was covered while defendant had it. What might have been attributable to ordinary wear and tear, as opposed to damage attributable to defendant, was not given any reasonable explanation. There was no evidence adduced as to when and where the items came up missing, or as to what the value thereof was. Plaintiff

asserted a \$700.00 loss in 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 herein. Plaintiff's claim for reimbursement for repairs is similar to defendant's claim, and is likewise found to be without merit. The Court also finds that the record does not support a finding that defendant is entitled to any interest in the boat, or the proceeds thereof.

7. On or about September 26, 1987, defendant purchased two ladies rings from Morgan Jewelers, one costing \$1,575.00 and the ladies solitaire ring costing \$2,538.00. Defendant incurred charges on his charge account in the total amount of \$4,327.03. Shortly before Christmas 1987, defendant gave them as gifts to plaintiff. When the parties separated in mid-January 1989, defendant was still paying on the rings. Plaintiff is awarded the rings, subject to her repaying 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 thereon until all amounts provided herein are fully satisfied. Defendant is to restore the original stones to the rings, and obtain certification from Morgan Jewelers that the rings are as originally delivered to him in September, 1987.

8. At the time of the separation, 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 shall pay plaintiff for the uncovered portion of the treatment in the amount of \$65.75.

Defendant caused plaintiff's coverage terminated effective August 12, 1990, several months before the divorce was granted herein. There were no controlling temporary orders concerning health care coverage.

A pretrial was held before Commissioner Peuler on November 2, 1989. The minute entry is silent on the issue of insurance. A second pretrial was held before the undersigned on February 1, 1990. Plaintiff testified that defendant mentioned she was taken off the insurance, and that the Court admonished defendant to reinstate coverage. The minute entry doesn't reflect any details of the conference. Apparently, no request for an order was made, and no order was entered by the Court on the issue of insurance. The Court has no independent recollection thereon.

During July 1990, plaintiff consulted with a physician about treatment for a deviated septum and a ventral hernia. One physician obtained pre-approval from Utah Public Employees Health Program. On August 15, 1990, surgical correction of the two conditions took place and UPEH has declined payment for lack of coverage. Total medical bills were incurred in the amount of \$4,690.09. Plaintiff seeks recovery of this amount from defendant. Since there was no order thereon, the Court finds that it is reasonable that these obligations be treated as any other marital obligation. Accordingly, the Court orders defendant to pay one-half of said amount, plus accruing interest thereon and one-half of any fees or costs taxed against the parties through any collection or legal actions, and hold plaintiff harmless therefrom.

9. Both parties seek an award of attorney's fees herein. Plaintiff asserts that she should be awarded one-half of a fee which ultimately will be around \$5,500.00. Defendant, on the other hand, claims entitlement to a fee of just over \$2,500.00. The financial statements herein indicated plaintiff had monthly income approximating \$1,550.00, while defendant had monthly income of \$1,793.00. Neither party has demonstrated 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.

Counsel for plaintiff shall prepare and submit to opposing counsel for approval appropriate supplemental Findings, Conclusions and supplemental Decree, consistent with the foregoing.

Dated this 5th day of November, 1991.


KENNETH RIGTRUP
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this ____day of November, 1991:

Craig M. Peterson
Attorney for Plaintiff
426 South 500 East
Salt Lake City, Utah 84102

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

COURTESY COPY

Craig M. Peterson (2579)
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LITTLEFIELD & PETERSON
426 South 500 East
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Telephone: (801) 531-0435

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

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LYNNETTE MANSKE 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 relationship 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 for CR England & Son 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.

6. In 1987, Defendant brought in earnings of approximately \$26,500, while Plaintiff reported \$787 income 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 1989 and Plaintiff had a net income from her business for that year of approximately \$8,800.

7. Plaintiff purchased her home at 3773 South 3520 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 \$37,000. The home has a current mortgage of approximately \$47,000. During the marriage, the home was repainted, 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 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 \$2,849.41 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.

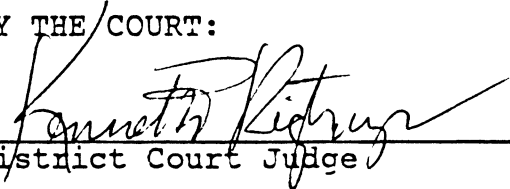
5. The Defendant should be ordered to pay the uncovered portion of treatment for the Plaintiff's jaw in the amount of \$65.75.

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 21st day of January, 1992.

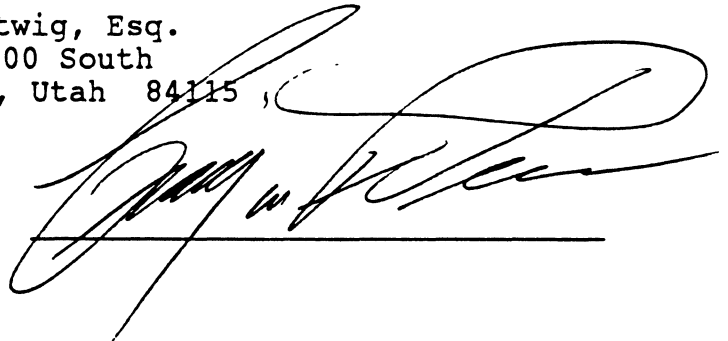
BY THE COURT:


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^d day of January, 1992, to:

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



COURTESY COPY

Craig M. Peterson (2579)
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LITTLEFIELD & PETERSON
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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
	:	

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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 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.

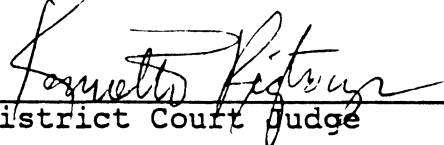
5. The Defendant shall be ordered to pay the uncovered portion of treatment for the Plaintiff's jaw in the amount of \$65.75.

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.

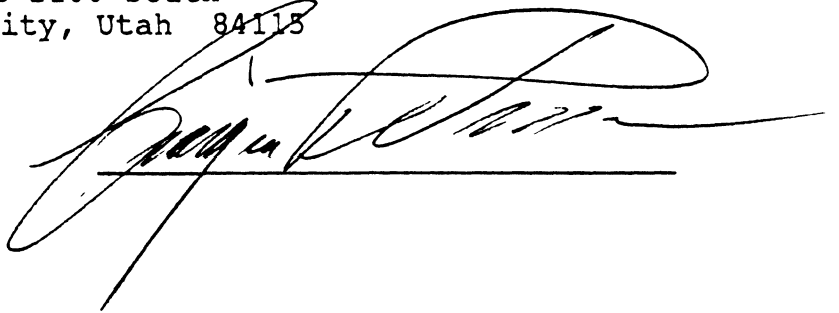
BY THE COURT:


District Court Judge

CERTIFICATE OF HAND-DELIVERY

I hereby certify that I caused to be hand-delivered,
a true and correct copy of the foregoing, SUPPLEMENTAL DECREE OF
DIVORCE, this 2^d day of January, 1992, to:

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

A handwritten signature in black ink, appearing to read "David R. Hartwig", is written over a horizontal line.

Torres.SDC/P12

APPENDIX "B"

1 Q. Was that ever terminated?

2 A. Yes.

3 Q. When was it terminated?

4 A. The first time, August 11th.

5 Q. August 11th of what year?

6 A. '90.

7 Q. Was it reinstated?

8 A. Yes.

9 Q. When was it reinstated?

10 A. October 7th, '90.

11 Q. And is it now an insurance plan which is
12 under what we call COBRA benefit?

13 A. Yes.

14 Q. Was that accomplished in January of
15 1991?

16 A. Yes, January 27th.

17 Q. And do all the records that you have in
18 front of you support the answers that you've given
19 here today to the questions that I just asked you?

20 A. Yes.

21 Q. And, in addition -- well, if I can have
22 that, please?

23 Also attached to this exhibit is a cover
24 letter from my office asking you to bring these
25 records to the trial, is that correct?

1 Plaintiff's 16, your Honor.

2 THE COURT: Any objection?

3 MR. HARTWIG: I'd like the opportunity
4 to at least review them, your Honor.

5 THE COURT: Do you want to show them to
6 Counsel?

7 MR. PETERSON: I previously reviewed
8 that document out in the hall during the prior
9 proceeding, is that correct?

10 A. Yes.

11 Q. And I have tabbed that exhibit with
12 yellow tabs. Can you, please, turn to the first tab,
13 and I'm going to give you a pen, and ask you to mark
14 that tab as A. And directly underneath that, mark
15 that Tab B. What is Tab B?

16 A. Tab B is a copy of a change card that
17 was sent to PEHP, removing Lynette effective August
18 12th, '90.

19 Q. Who's that signed by?

20 A. John Torres.

21 Q. So, on August -- did you say 11th or
22 12th?

23 A. The coverage was terminated on the
24 12th. She was covered the 11th up until midnight, and
25 then dropped at 12:00.

1 records concerning an injury to the jaw?

2 A. Yes.

3 Q. Would you please tell the Court what you
4 have found as regards to the jaw?

5 A. Pardon me?

6 Q. What were your findings? What did the
7 records show you?

8 A. There was a claim for a fracture of the
9 mandible, which is the jaw, in January of '89 and
10 February of '89.

11 Q. Do you show any other claims for that --
12 for the jaw and mandible?

13 A. Not after February of '89.

14 Q. As part of your usual course of
15 business, do you ever receive notice of any further
16 pending treatment from physicians or health care
17 providers?

18 A. Yes, occasionally we will.

19 Q. Have you, in your review of these
20 records, found any such notifications?

21 A. No.

22 Q. What would this notification look like,
23 can you explain to the Court what this would be?

24 A. It would be a report from the physician
25 indicating possible future treatment.

1 Q. And, again, just for clarification, you
2 haven't found any such indication?

3 A. No.

4 MR. HARTWIG: No further questions for
5 this witness, your Honor.

6 THE COURT: You may cross.

7 CROSS-EXAMINATION

8 BY MR. PETERSON:

9 Q. I am sorry. What is your name?

10 A. Gary Field.

11 Q. Field?

12 A. Yes.

13 Q. Mr. Field, the document that you just
14 looked at, does it indicate how the injury occurred to
15 the jaw?

16 A. None of the documents indicate how it
17 occurred, no.

18 Q. Is there a notation on one of those
19 documents that says: "Husband hit her in the jaw"?

20 In fact, I believe I saw it out in the
21 hall.

22 MR. HARTWIG: We are stipulating that
23 there was a confrontation, and an injury was caused by
24 my client.

25 MR. PETERSON: Okay. That's fine. I

1 Q. For surgery performed when?

2 A. "August 15th, 1990."

3 Q. Now, would you move to -- so there was a
4 check sent to the St. Mark's Hospital, and you
5 demanded its return, is that correct?

6 A. We asked for its reimbursement because
7 of the termination, yes.

8 Q. And Page 1 is a copy of that check, Page
9 1 of A?

10 A. Yes.

11 Q. Now, if you'll mark the next yellow tab,
12 B, please?

13 And, again, that document consists of,
14 as I recall, two pages, is that correct, or is it
15 three?

16 A. Three.

17 Q. And the second page of that document
18 marked "B" is what?

19 A. A letter from myself indicating the same
20 reason.

21 Q. And who is that addressed to?

22 A. Dr. Kendrick Morrison.

23 Q. And telling Dr. Morrison to return a
24 check that was sent to him for payment of the surgery,
25 is that correct?

REDIRECT EXAMINATION

BY MR. HARTWIG:

Q. Okay, this surgery in August of 1990, do your records show what it was for?

MR. PETERSON: Objection, your Honor; relevancy. I don't understand "what it is for" is relevant, at all.

THE COURT: Overruled.

You may answer.

THE WITNESS: A ventral hernia surgery.

MR. HARTWIG: Okay. Do you have any knowledge or understanding of what the different surgeries are?

A. Some.

Q. Can you state whether this surgery would be, based on that limited knowledge, in any way related to the jaw injury from 1989?

A. No.

MR. PETERSON: Objection, your Honor. It is not relevant. We are making no allegation that it is related to the jaw injury.

THE COURT: Sustained.

MR. HARTWIG: If you would refer to the entitlement authority, the preauthorization order I believe it was 15-C?

1 MR. PETERSON: 17.

2 MR. HARTWIG: Excuse me. Thank you,
3 17-E, I believe, is the preauthorization?

4 A. Correct, yes.

5 Q. Is there a disclaimer at the bottom
6 concerning the effect or the basis of this
7 authorization?

8 A. Second paragraph indicates approval of
9 the surgery at the very -- the last sentence of the
10 paragraph indicates: "The benefits are subject to
11 coverage eligibility at time of service."

12 MR. HARTWIG: Thank you.

13 No further questions.

14 THE COURT: Anything further?

15 MR. PETERSON: Just briefly, your
16 Honor.

17 Does the doctor's preauthorization
18 request letter also indicate that the surgery was for
19 a deviated septum, two surgeries?

20 THE WITNESS: The authorization is for a
21 ventral hernia surgery.

22 MR PETERSON: The doctor's letter is
23 what I was asking about.

24 THE WITNESS: Oh, I'm sorry.

25 Which doctor?

1 Q. And that Appraisal states the current
2 value, is that correct?

3 A. Yes.

4 Q. The value then is approximately ten or
5 eleven thousand dollars less than the
6 currently-outstanding mortgage?

7 A. Yes.

8 Q. While you were married to the Defendant,
9 was the home remodeled?

10 A. Yes, it was.

11 Q. How was it remodeled?

12 A. We repainted, took out the fireplace,
13 recarpeted and new handrailing; finished a bathroom
14 downstairs.

15 Q. How was that paid for?

16 A. A lot of it was cash and checks.

17 Q. I show you what's been marked as
18 Plaintiff's Exhibit 18.

19 Was that document prepared in my office
20 with your assistance and at your direction?

21 A. Yes.

22 Q. That document was entitled "Remodeling
23 paid for by Plaintiff," and it has an address there,
24 is that correct?

25 A. Yes.

1 Q. And at the time that you remodeled the
2 house, had he opened his own account?

3 A. I don't remember when he opened his
4 account.

5 Q. The cash or the checks that were written
6 for the improvements, who paid for those?

7 A. I did.

8 Q. Did you pay for it, then, entirely, or
9 did Mr. Torres make some contributions?

10 A. He made some contributions.

11 Q. Approximately how much would you
12 estimate he made?

13 A. Maybe a fourth.

14 Q. Fourth of the total cost?

15 A. Yes.

16 Q. And what was the total cost, as
17 represented on Plaintiff's Exhibit No. 18?

18 A. "\$5,943.67."

19 Q. So, it's possible that he made
20 approximately a fourteen hundred dollar contribution,
21 then?

22 A. Possibly.

23 Q. Did he contribute labor?

24 A. Yes.

25 Q. How much labor?

1 A. The same as the rest of us.

2 Q. Was he paid for his labor?

3 A. Not with money.

4 Q. Let me ask you, while he was living
5 there, did he make any mortgage payments?

6 A. I think he made one.

7 Q. How many years did he live there?

8 A. Two.

9 Q. So, he made one mortgage payment in 24
10 months?

11 A. That was out of his checking account.
12 But I also gave him money to put in his checking
13 account to make the house payment. At that time, we
14 were trying to set up some type of distribution of the
15 bills.

16 Q. So, even though he may have made that
17 mortgage payment, you gave him the money for that
18 purpose?

19 A. Yes.

20 Q. Did he pay any rent while he was living
21 there?

22 A. No.

23 Q. Did he contribute to food and household
24 expenses?

25 A. Yes.

1 Q. How much?

2 A. He would give me his checks, and I'd
3 usually deposit them in my checking account, which I
4 would in turn give him back almost more than half of
5 it for his weekly expenses.

6 Q. Is it your opinion that he's entitled to
7 receive any funds for the remodeling of the home?

8 A. No.

9 Q. Is it your opinion that he have a place
10 to live without cost?

11 A. Yes.

12 Q. Have you offered him the home if he'll
13 simply clear your name from the mortgage?

14 A. Yes.

15 Q. Are you willing that the Court allow him
16 to take the home, today, if he'll clear your name from
17 the mortgage?

18 A. Yes.

19 Q. Did you own a boat during the marriage?

20 A. Yes, I did.

21 Q. When was the boat purchased?

22 A. July 1st, '86.

23 Q. Approximately 20 days or so before you
24 were married?

25 A. Yes.

1 Q. And why is it that you want them
2 delivered to Morgan Jewelers and you pick them up from
3 Morgan Jewelers?

4 A. I would like them to take out the stones
5 to make sure that they are not cubic zirconium.

6 Q. How did the rings come into the
7 possession of Mr. Torres?

8 A. He asked me to let him take them and
9 have them appraised so that I could get the insurance
10 through my homeowners and he wouldn't have to pay
11 Morgan Jewelers that high of insurance.

12 Q. In fact, are you willing, even though
13 those were gifts, to take over the payoff as of today
14 at Morgan Jewelers?

15 A. I don't think I should have to because
16 they were gifts, but I would.

17 Q. In fact, are you concerned that they
18 would not be paid for unless you do take over the
19 payments?

20 A. Pardon me?

21 Q. Are you, in fact, concerned that they
22 would not be paid for by Mr. Torres unless you do take
23 over that payment?

24 A. Yes.

25 Q. Are you asking the Court to give you

1 anything along those lines?

2 A. Yes.

3 Q. These checks that were attached to your
4 exhibit, as to the repairs, were those all from your
5 personal account?

6 A. Which exhibit was that? The two checks
7 that I'm looking at, one is from my personal, and one
8 is from my business.

9 Q. Okay, so you actually did make payment
10 from your business account for personal purposes?

11 A. Yes.

12 Q. You testified that John did not pay
13 rent. Have you ever been married before?

14 A. Yes.

15 Q. Did your prior husband ever pay rent
16 while you were married?

17 A. No.

18 Q. Did you expect rent from your prior
19 husband?

20 A. No.

21 Q. But you expected that John pay rent
22 during this marriage?

23 A. John lived in my house free of rent for
24 three months before the marriage.

25 Q. Is that with your consent?

1 A. Yes, because he had no money.

2 Q. So, you did then allow him to live
3 without the expectation of rent, "yes" or "no"?

4 A. Yes.

5 Q. And yet, now, today, you are saying, at
6 least that's my understanding from your testimony, is
7 that somehow he should have?

8 A. I'm not saying that. All I'm saying is
9 that he did not contribute.

10 Q. Concerning the boat, and, right now, I'd
11 like to focus on the Raynell boat, so that we know
12 which boat we are talking about. It's my
13 understanding that this was purchased July 1st, 1986,
14 is that correct?

15 A. Yes.

16 Q. And that was a mere 20 days before your
17 marriage?

18 A. Yes.

19 Q. When did you plan on getting married to
20 John?

21 A. He set the date, July 19th.

22 Q. When did you agree to that?

23 A. About -- well, the 30 days after --
24 before that, because his divorce was just final from
25 Nancy.

1 THE COURT: Sustained.

2 MR. HARTWIG: Okay. I'd like to turn,
3 now, to the diamond rings, or the diamond/ruby and
4 diamond ring.

5 You indicated that you'd be willing to
6 take the rings and assume the payments, thereon, is
7 that a correct summation of your testimony?

8 A. If I had to.

9 Q. Are you aware that it has been
10 Defendant's position that if you wanted the rings,
11 that you could have them, as long as you assumed the
12 liability, thereon, and held him harmless, therefrom?

13 A. Pardon me?

14 Q. Are you aware of the Defendant's
15 position, that you could be awarded the rings that's
16 -- that are involved here, as long as you would have
17 assumed the payments, thereon, and held him harmless?

18 A. He never offered both rings. I offered
19 me one ring.

20 Q. You don't -- you have no -- do you
21 recall appearing before the Court last summer for a
22 pretrial conference before Commissioner Peuler?

23 A. Yes.

24 Q. Do you remember having it communicated
25 to you that it would be possible to have both rings if

1 or --

2 A. Well, I don't count on my calendar how
3 often I go out; once or twice a month.

4 Q. Do you have in front of you, with the
5 exhibits, Plaintiff's Exhibit P-22?

6 A. Yes.

7 Q. I've asked you to look at that and
8 review it.

9 This is a charge sales slip, is that
10 correct?

11 A. It looks like it.

12 Q. And whose name is it in?

13 A. "John Torres."

14 Q. Have you made any payments to Morgan
15 Jewelers?

16 A. Yes, I made one.

17 Q. One payment?

18 A. I think so.

19 Q. When?

20 A. I don't remember the date.

21 Q. Do you have any documentation with you
22 here today?

23 A. I believe there's a check in some of the
24 things that I have there.

25 MR. HARTWIG: Counsel, do you have --

1 MR. PETERSON: I don't know.

2 Do we have a check? Do you recall a
3 check?

4 She says a check. I assume that there
5 is one. Did you want to review it?

6 MR. HARTWIG: While he's looking for it,
7 at this point, I'll hold.

8 And these rings were purchased, then --

9 A. "9-26-87."

10 Q. "9-26-87." And then you've made one
11 payment since that time.

12 Have you received any notices or any
13 overdue bills or anything like that, any indication
14 from Morgan Jewelers that this account has not been
15 paid?

16 A. Not lately, but then John only let
17 certain people know his change of address.

18 Q. Are you aware of the fact, presently,
19 that payments have been made on this?

20 A. No.

21 Q. Okay. At this time, I'd like to go to
22 the surgery involved, your pre-approved surgery,
23 Plaintiff's Exhibit 23 --

24 A. I'm sorry. I don't have a copy in front
25 of me -- oh, there it is.

1 Q. And I would like to have you turn to the
2 default judgment, which is the fourth page from the
3 end.

4 Okay, were you served with process in
5 this matter?

6 A. Yes.

7 Q. And you admit that this is, as it
8 indicates, a default judgment?

9 A. Yes.

10 Q. And do you understand what a default
11 judgment is?

12 A. Not exactly.

13 Q. Are you aware that it was a judgment
14 taken against you because you apparently failed to
15 answer or in any way contest this?

16 THE COURT: The Court has a modest
17 understanding of default judgments. I don't know why
18 we go through these questions with the witness that
19 obviously doesn't have any knowledge about it. Can't
20 the Court take judicial notice of how default
21 judgments are obtained?

22 MR. HARTWIG: Certainly, the Court may,
23 your Honor. I was getting to the point that I'm --

24 THE COURT: Why don't you do that in
25 argument? Why waste the time with the witness?

1 Obviously, the witness hasn't sufficient knowledge
2 about these things.

3 MR. HARTWIG: Quite simply, your Honor,
4 if I may ask, then, my next question, I think that
5 purpose will come to light.

6 Then, you essentially did nothing as far
7 as to try to contest this matter?

8 A. Yes, I did.

9 Q. You did -- you did not enter an
10 appearance or in any way contest the legal action
11 then, is that correct?

12 A. I didn't myself, no.

13 Q. Did you do it through counsel that you
14 hired?

15 A. Yes.

16 MR. HARTWIG: Then, if I may address the
17 Court, your Honor, there appears to be --

18 THE COURT: Well, when we get to the
19 close of testimony, I think you can make your point in
20 closing argument.

21 MR. HARTWIG: I shall, your Honor.

22 What attorney did you hire to represent
23 you in this matter?

24 A. Craig Peterson.

25 Q. Do you know that he -- excuse me. Do

1 you know whether he entered an appearance in this
2 matter to contest this debt?

3 A. No, I don't.

4 Q. Did you, yourself, other than hiring
5 Mr. Peterson, attempt to do to anything to prevent
6 this judgment from entering?

7 A. I turned all this information over to my
8 attorney.

9 Q. And do you have any idea of what
10 Mr. Peterson did for you in this particular matter?

11 A. He had this set aside.

12 Q. The default judgment has been set aside?

13 A. Yes.

14 MR. HARTWIG: Then, no further
15 questions, your Honor, on that issue.

16 Were you present in court when your
17 witness -- I believe her name is Kate Blackwood --
18 gave her testimony?

19 A. Yes.

20 Q. And you were also present when our
21 witness, Gary Field, gave his testimony?

22 A. Yes.

23 Q. Do you remember Mr. Field testifying to
24 the fact that the authorization document, the letter
25 authorizing your surgery, indicated at the bottom that

1 it was approved if you were covered as of the date of
2 surgery?

3 A. Yes.

4 Q. Did you check with your physicians or
5 check with the Public Employees Health Administration,
6 at all, during the period of time from the receipt of
7 the letter until your surgery?

8 A. My doctors did.

9 Q. Did you?

10 A. No, I did not.

11 Q. You didn't call anybody to see if there
12 was going to be any problems or anything else along
13 that line?

14 A. My doctor told me he'd take care of it
15 all.

16 MR. HARTWIG: Your Honor, I believe
17 that's simple hearsay, and ask that it be stricken,
18 and ask that the witness --

19 THE COURT: It may be stricken.

20 MR. HARTWIG: -- answer the question.

21 What I'm asking, then, if I understand
22 what you are saying correctly: You did not check,
23 prior to entering the hospital, whether the
24 authorization was still good, is that correct?

25 A. I didn't think I had to, since he was

1 ordered to keep me on the insurance.

2 Q. Do you have any idea where that order
3 is?

4 A. It was between us and Judge Rigtrup's
5 office.

6 Q. And have you seen any order that
7 indicated that?

8 A. No, I have not.

9 Q. Is it my understanding of your testimony
10 that you have previously offered Mr. Torres your
11 residence?

12 A. Yes, that's correct.

13 Q. When?

14 A. I offered it to him when he said he had
15 \$20,000 equity in it.

16 Q. When?

17 A. Right after we separated.

18 Q. Any time since litigation had commenced,
19 do you know, has there been an offer communicated to
20 Mr. Torres that he could walk into your house and take
21 it essentially free and clear if you'd just clear your
22 name?

23 A. Say that again?

24 Q. Let me try rephrasing it. Since we
25 commenced this case, did you ever communicate that

1 is?

2 A. It's my '86 returns.

3 Q. Okay. And do you file a Schedule C or
4 some sort of self-employment?

5 A. I have no idea. That's why I have a
6 bookkeeper.

7 Q. If I may, then, point out, I'm, for
8 purposes of the record, showing the top page, which is
9 the 1040.

10 And I would have you look at Line 12,
11 and would you please read what that is?

12 A. "Business Income or Loss."

13 Q. Okay. And that figure is?

14 A. "\$3,853."

15 Q. Is that a negative?

16 A. Yes.

17 Q. Does this document reflect that you had
18 any other income for that year?

19 A. Not unless it says "child support," no.

20 Q. And this was solely, then, from your
21 business?

22 A. Yes.

23 Q. At this point, I'm presenting to the
24 witness Defendant's Exhibit 12, which is the 1987 tax
25 returns.

1 Do you recognize that document?

2 A. Yes.

3 Q. To the best of your knowledge, is that a
4 true and correct copy of what it portends to be?

5 A. It's true and correct as far as Jerry
6 and Juli. They put the wrong last names on there.
7 That is not their names.

8 Q. But, as far as you know, the rest of the
9 document -- essentially, these are just true and
10 correct copies, and you have no reason to doubt that
11 they have been altered in any way from the originals
12 that have been filed?

13 A. No. They haven't been altered, yes,
14 that's true.

15 Q. Okay, then --

16 MR. PETERSON: Your Honor, for the
17 benefit of time, we'll stipulate that these five
18 exhibits are copies of her tax returns, and I think
19 we've already stipulated that before. They've been
20 admitted into evidence as such, and they reflect her
21 income and deductions that she might be entitled to
22 for each of those years.

23 And for purposes of getting that before
24 the Court, we so stipulate. They speak for
25 themselves, and I think Counsel can argue the

1 documents. I can't see any reason for any further
2 testimony.

3 If he wants to ask questions relating to
4 contesting how she could have had enough money to make
5 these payments for a boat, or enough money to pay for
6 a house, on the limited amount of income that she
7 reported, I think he ought to get directly to the
8 question rather than trying to lay additional
9 foundation from the documents.

10 THE COURT: Sustained.

11 MR. HARTWIG: Then, I will have no
12 further questions on this point, your Honor.

13 And I will thank Counsel for his timely
14 suggestion.

15 I have no further questions, your Honor.

16 THE COURT: Anything further?

17 MR. PETERSON: Briefly, your Honor, if I
18 may? Thank you.

19 REDIRECT EXAMINATION

20 BY MR. PETERSON:

21 Q. Lynette, what's your employment?

22 A. I'm self-employed.

23 Q. As what?

24 A. Cosmotologist.

25 Q. Is that sometimes referred to as a

1 "Wages, Salary and Tips, \$26,515." Was that all
2 Mr. Torres?

3 THE WITNESS: I don't know. I'd have to
4 look.

5 THE COURT: Line 7, it reports: "Wages,
6 Salaries and Tips of \$26,515." In '87, was he the
7 only one that was employed for an employer where he'd
8 get a W-2?

9 THE WITNESS: No, we were both
10 employed.

11 THE COURT: Well, you have a Schedule C
12 for your "Becky's Hair Fashions." Was that --

13 THE WITNESS: That's mine. That's for
14 me.

15 THE COURT: Listen to my questions.

16 THE WITNESS: I'm sorry.

17 THE COURT: Was your only source of
18 income Becky's Hair Fashions?

19 THE WITNESS: Yes.

20 THE COURT: In '87?

21 THE WITNESS: Yes.

22 THE COURT: So, the reported wages would
23 have been all Mr. Torres'.

24 THE WITNESS: Yes.

25 THE COURT: 1988, "\$23,969" in reported

1 wages, that would have all been Mr. Torres?

2 THE WITNESS: What year?

3 THE COURT: '88.

4 THE WITNESS: I think we were separated
5 then, weren't we?

6 THE COURT: I don't know.

7 THE WITNESS: I only recall filing
8 income tax with John one year; or was it two?

9 THE COURT: It's a joint return for
10 1988. Was your only source of income Becky's Hair
11 Fashions in 1988?

12 THE WITNESS: Yes.

13 THE COURT: The divorce was filed June
14 16, '89; does that tell you when you separated?

15 THE WITNESS: Yes.

16 THE COURT: When did you separate?

17 THE WITNESS: January 14th.

18 THE COURT: 1989?

19 THE WITNESS: Yes.

20 THE COURT: On November 2nd, 1989, you
21 appeared before Commissioner Pueller for a pretrial; do
22 you remember that?

23 THE WITNESS: Yes.

24 THE COURT: Do you remember what she
25 recommended?

1 THE WITNESS: No.

2 THE COURT: "Home to be appraised. Any
3 equity acquired during marriage to be divided
4 equally. Plaintiff awarded boat. Each party awarded
5 one ring. Debt to be divided equally. Other issues
6 settled"; is that as you recall it?

7 THE WITNESS: Yes.

8 THE COURT: Was there anything wrong
9 with that?

10 THE WITNESS: Well, there was no equity
11 in the home.

12 THE COURT: Was there anything wrong
13 with that?

14 THE WITNESS: Yes, I wanted both of the
15 rings. They were both gifts.

16 THE COURT: Was that the only holdup at
17 that time?

18 THE WITNESS: I don't recall.

19 THE COURT: Do you recall what his
20 position was?

21 THE WITNESS: No, I don't.

22 THE COURT: As far as you were
23 concerned, the only holdup was that you wanted both
24 rings.

25 THE WITNESS: Yes.

1 doors, locked them, and said that's the end of it.

2 Q. Did you file bankruptcy?

3 A. Yes, I did.

4 Q. And about when was that?

5 A. '85? Mid part of '85, if I remember
6 correctly.

7 Q. Okay. And after that, then, did you
8 obtain employment?

9 A. Yes, I did. I went to work for
10 C.R. England & Sons, who I had worked for before.

11 Q. When did you commence that,
12 approximately?

13 A. Just shortly after I closed the
14 company.

15 Q. And, at that point, is this around the
16 time when you and Lynette were getting married?

17 A. It was just a little before that time.

18 Q. Okay. And could you please explain to
19 the Court how you and Lynette set up or handled your
20 joint -- excuse me, not joint -- your bills and
21 expenses?

22 A. Due to my problems with the IRS, which I
23 told Lynette I had problems and which she was aware
24 of, I did not want a checking account in my name. I
25 didn't want anything in my name. So, when I was paid

1 at C.R. England -- I believe it was every Wednesday --
2 Lynette would get my check, and then it would go into
3 her account, and I didn't have a checking account.

4 Q. Okay. Were bills of yours paid out of
5 that checking account?

6 A. I didn't have any bills.

7 Q. Okay. Were your ongoing costs of
8 living, your day-to-day expenses, paid out of that
9 account?

10 A. Yes. Lynette -- sometimes I'd keep some
11 extra money over, and sometimes Lynette would give me
12 a check; just depended on what I needed.

13 Q. Okay. Now, Lynette testified to the
14 fact that she remembered that you took back about half
15 of your paychecks; is that correct?

16 A. There might have been some instances
17 when half of my paycheck came back to me, but,
18 ultimately, it was her purchasing something for the
19 house or something for the boat or something of that
20 nature.

21 Q. You mentioned additional purchases. Did
22 you and Lynette purchase other things other than the
23 boat and improvements to the house?

24 A. Well, there was a boat. Like you said,
25 there was improvements on the house; put a backyard

1 in.

2 Q. Did you purchase additional items such
3 as the refrigerator?

4 A. Yes, we purchased a refrigerator. There
5 was, like, Christmas gifts for the kids and Lynette's
6 kids, stuff like that.

7 Q. Were there other things that were
8 purchased for Lynette and the children that you can
9 recall while you were together?

10 A. Yes. One thing we purchased, and we
11 both agreed on -- we were kind of lucky -- is we went
12 to Wendover, and I won 1,100, \$1,200. And with that
13 money, we bought the kids bedroom sets.

14 Q. Okay, now, if I can turn your attention
15 to the insurance issue and the incident with the jaw.
16 We've already indicated to the Court that there was an
17 altercation in January of 1989; is that correct?

18 A. Yes, sir, it is.

19 Q. Wherein you struck Lynette, and
20 apparently broke her -- somehow fractured her jaw; is
21 that correct?

22 A. Yes.

23 Q. Okay. At this point in time, have my
24 representations to the Court and Counsel, as far as
25 your responsibility, that you are willing to take

1 responsibility for that, has that been correct?

2 A. Yes, it is.

3 Q. Did you accompany Lynette or at any time
4 meet with the physicians who were treating her for the
5 jaw problem?

6 A. I was up to the hospital and talked to
7 the doctor, but, no, I really didn't meet with them.

8 Q. Okay. Was there, to your -- well, first
9 of all, do you remember any agreement between you and
10 Lynette concerning carrying the insurance?

11 A. Yes.

12 Q. What do you remember of that agreement
13 to date?

14 MR. PETERSON: Are we asking about the
15 health insurance?

16 MR. HARTWIG: That is correct, thank
17 you, Counsel.

18 THE WITNESS: Yes. We were in Judge
19 Rigtrup's chambers, and Lynette was present, and her
20 attorney and myself and your co-worker, I believe, at
21 the time, we were talking about settlement. And
22 Lynette brought up that I broke her jaw, which the
23 Judge turned to me and asked me if I did, and I said,
24 "Yes, I did." Lynette said that, at that time, that
25 due to what the doctors had told her, she needed to be

1 on the insurance for a year and a half. At that time,
2 the Judge turned to me and says, "Would you leave her
3 on the insurance for a year and a half for her jaw?"
4 And I said, "Yes, I would."

5 At that time, he asked if we agreed on
6 that, and of course I said, "Yes." And after the year
7 and a half was up, just a little over, I took her off
8 the insurance.

9 Q. Okay. And you were here during the
10 testimony of Kate Blackwood, is that correct?

11 A. Yes.

12 Q. Do you remember her testimony concerning
13 the costs, the additional costs to you, for carrying
14 Lynette on your health insurance?

15 A. Out of my paycheck every two weeks was
16 like 34, \$35.

17 Q. And when did you sign the drop slip for
18 removing Lynette from your health insurance?

19 MR. PETERSON: Objection, your Honor.
20 The document speaks for itself, and I think the people
21 who control those documents have already indicated
22 that it was signed on August 15th.

23 THE COURT: Is your evidence any
24 different than what we've seen documented?

25 MR. HARTWIG: No. We would have no

1 Q. And, then, based on your manual and what
2 you've read in the manual, when would you have
3 expected this drop, dropping Lynette from the
4 insurance, to have occurred?

5 A. Well, the pay period in this check that
6 ends 8-11-90 actually runs from, like, 7-29 of '90 to
7 8-11 of '90. The pay date being the following
8 Friday. It was my assumption that she would have been
9 dropped in that time period, from 7-29 to 8-11 of
10 '90.

11 Q. Okay. Did you actually know that
12 Lynette was scheduled for surgery on 8-15-90?

13 A. No.

14 Q. Do you have any knowledge as to whether
15 Lynette has had any further problems with her jaw?

16 A. According to the PEHP records that I
17 obtained, she hadn't been back to see a doctor about
18 her jaw.

19 Q. And did you, as soon as you learned of
20 the problem with the insurance, have Lynette Torres
21 reinstated?

22 A. Yes, I did. Since she was taken off,
23 though, we had to go about it a little different. She
24 had to fill out a form, which I delivered to her place
25 of business. And she filled the form out, and then it

1 was taken up to, I guess, the insurance people for
2 Salt Lake City, and then they sent it on to PEHP, if I
3 remember correctly.

4 Q. And did you contact the appropriate
5 people at your employment to see if it would be
6 possible to have this surgery taken care or covered by
7 the insurance?

8 A. Yes. I went over and talked to Kate and
9 asked her if there was any way that they could make
10 the insurance retroactive back to the date that she
11 was taken off, and they said no.

12 Q. Okay, at this time I'd like to take your
13 attention to the boats that have been involved. You
14 have claimed an interest in the 1973 Raynell boat.
15 Would you please explain the basis for that claim?

16 A. Due to my labor that I put in it and the
17 help paying for the boat.

18 Q. Did you work on the prior boat, at all?

19 A. Yes, the one that belonged to a
20 Mr. Peterson.

21 Q. And this was the Bayliner that we are
22 talking about?

23 A. Yes, sir.

24 Q. Okay, would you please explain to the
25 Court the work that you performed on the Bayliner?

1 stating that.

2 MR. PETERSON: Objection, your Honor.

3 THE COURT: Sustained.

4 MR. HARTWIG: Okay.

5 If I can turn your attention, now, to
6 Lynette's house. You claim, through your pleadings in
7 here today, that you believe you should have a partial
8 interest in that house. Would you please explain to
9 the Court the basis for that claim.

10 A. Due to the financial aid -- or the money
11 that I put into the house and labor, my skills.

12 Q. Would you please give the Court -- first
13 of all, do you have a remembrance as to the work that
14 you did in the house?

15 A. Oh, yes.

16 Q. Could you please tell the Court what
17 that was.

18 A. Well, inside the house, the basement
19 downstairs was non-finished cement floor; half cement
20 walls. The upper half of the walls were 2x4's and
21 insulation. I'd studded out all the walls, did the
22 majority of electrical; however, we did change
23 electrical boxes and did contract that out, because
24 220 volt was involved in that and I'm a little
25 hesitant about messing with 220.

1 I installed the bathroom, which meant
2 running all the plumbing for water to the sinks, the
3 toilet, the showers, plus all the draining. Along
4 with the purchase price, there was a corner shower
5 that was quite expensive. Lynette and I both like
6 nice things, and we purchased nice things.

7 The floor in the bathroom downstairs and
8 the laundry room and the closet and the hallway was
9 all ceramic tile. The closet, we put cedar in the
10 closet. And then, in the other part of the basement,
11 put acoustics on the ceiling.

12 THE COURT: What on the ceiling?

13 THE WITNESS: Acoustic ceilings.

14 Sheetrock all the walls, and then
15 paneled them; expensive carpet on the floor.

16 MR. HARTWIG: Okay, was there anything
17 else?

18 A. Yes, there was doors for the laundry
19 room upstairs. We carpeted -- we ended up carpeting
20 the whole house; had the upstairs -- ceramic tile to
21 the kitchen, the entryway; put new sliding doors on
22 the kids' bedrooms and downstairs on a closet; custom
23 made banister; outside, put a backyard in, cement
24 patio.

25 Q. Okay, you heard Plaintiff's testimony

1 concerning the cost of materials, which was
2 Plaintiff's Exhibit 18, being a total of \$5,943. Do
3 you have an opinion as to whether that is a fair and
4 accurate representation for the materials involved?

5 A. Yes.

6 Q. And that opinion, is that correct, or
7 not?

8 A. Yes, it's pretty accurate.

9 Q. Okay, were you working at this time?

10 A. Yes, I was.

11 Q. And employed full time?

12 A. Pardon.

13 Q. Full time?

14 A. Yes.

15 Q. What shift did you work?

16 A. Part of the time I worked at Kenworth
17 Sales, which was day shift, and the rest of the time I
18 worked for Salt Lake City Corporation, graveyard,
19 which was 11:00 at night until 8:00 in the morning.

20 Q. And you actually did some of this work
21 on the house?

22 A. Yes.

23 Q. When did you do that work?

24 A. A lot of times it was during the day.

25 When I worked for the City, it was during the day.

1 When I worked for Kenworth Sales, it was usually in
2 the evening and on the weekend.

3 Q. Did Lynette help you during those times?

4 A. Lynette pitched in and helped when she
5 was around there. Sometimes, when I worked on it, she
6 was at work, so it was a little difficult. But on the
7 weekends, she'd pitch in. The kids would -- they'd
8 come down and help clean up and stuff, yes.

9 Q. Do you have an opinion as to the value
10 of the work that you put into the house?

11 A. I guess, with parts and labor and
12 everything --

13 MR. PETERSON: Objection, your Honor;
14 foundation. There's nothing before the Court that
15 indicates that Mr. Torres has any expertise in the
16 area, other than as any other person who lives in a
17 home and goes in and remodels or refurbishes his own
18 home.

19 THE COURT: For that reason, I'll let
20 him testify.

21 MR. PETERSON: I think we need some
22 foundation as to what he's basing it on.

23 THE COURT: He did the work.

24 MR. PETERSON: Pardon?

25 THE COURT: Overruled. He did the work.

1 MR. PETERSON: Can we get an hourly
2 rate?

3 THE WITNESS: To clarify, Mr. Peterson,
4 I used to build homes for Earl Walter's Construction
5 and Glen Gilbert, sheetrocking, building homes. The
6 last home I built was up in Idaho, or helped build as
7 a carpenter. It was for a doctor right on the Snake
8 River. I've had experience.

9 MR. PETERSON: Based on that experience,
10 I believe that he clearly has no valid opinion before
11 the Court that he has just testified that his
12 experience is limited to a time substantially
13 different than the time in question and a place
14 substantially different, in another state.

15 THE COURT: Overruled.

16 MR. HARTWIG: Go ahead and answer. Do
17 you have an opinion as to what you would estimate the
18 value of these improvements to be?

19 A. I would estimate the value probably
20 roughly in the neighborhood -- say, somewhere in the
21 neighborhood of 12,000.

22 Q. Okay, is there any other property that
23 you claim is yours, or should be yours, that is not
24 presently in your possession?

25 A. Yes. When Lynette and I were married, I

1 THE COURT: You may cross.

2 CROSS-EXAMINATION

3 BY MR. PETERSON:

4 Q. Mr. Torres, as I understood your
5 testimony when you were in the Judge's chambers at
6 pretrial, the Judge asked if you would continue to
7 maintain health and accident insurance, and you agreed
8 that you would continue to maintain health and
9 accident insurance. That's what you testified; is
10 that accurate?

11 A. I only said I would continue the
12 insurance because Lynette said for a year and a half.
13 That's what the doctor recommended. I said that a
14 year and a half is fine with me. The Judge asked me
15 if that's okay. I said yes.

16 Q. You were in front of the Judge on
17 February 1st, 1990; do you recall that?

18 A. In his chambers, is that what you are
19 referring to?

20 Q. Yes.

21 A. Yes.

22 Q. You terminated the insurance on August
23 15th, 1990, that's --

24 A. August the 11th between --

25 Q. You went in and signed the change card

1 on August 15th, 1990; is that correct?

2 A. Yes.

3 Q. Was that a year and a half after you
4 were in the Judge's chambers?

5 A. It was a year and a half -- a little
6 over a year and a half after the date of the broken
7 jaw happened.

8 Q. In reality, the reason you terminated
9 that insurance is because you knew that Lynette was
10 having surgery; isn't it?

11 A. No, sir, it isn't.

12 Q. Mr. Torres, have you ever been convicted
13 of a felony?

14 A. I really don't see what that's got to do
15 with this case.

16 Q. It has a lot to do with your
17 credibility, Mr. Torres. I'm asking the question, and
18 you are not the judge, here.

19 Have you been convicted of a felony?

20 A. Yes, I have.

21 Q. Okay, and you understood, very clearly,
22 that the agreement was to maintain insurance, and you
23 represented to the Judge that you would do so; didn't
24 you?

25 A. When Lynette said for a year and a half,

1 I said, "Yes, I will stipulate to that." The Judge
2 asked me if I'd go along with that, if I had any
3 problems with that? I said, "No, I did not have any
4 problem with that." A year and a half.

5 Q. From the date of the divorce?

6 A. From January until August, is a little
7 over a year and a half, and that's when I took her
8 off.

9 Q. It was from the date of the divorce that
10 you agreed to maintain the insurance, wasn't it?

11 A. No, it wasn't.

12 Q. And you went in on the day of the
13 surgery, intentionally, and canceled that insurance,
14 didn't you?

15 A. No.

16 MR. HARTWIG: Objection, your Honor.
17 That's argumentative.

18 THE COURT: Overruled.

19 MR. PETERSON: This is
20 cross-examination.

21 THE WITNESS: The insurance --

22 MR. PETERSON: Mr. Torres, all that
23 requires is a "yes" or "no" answer. You went in on
24 the day of the surgery, intentionally, and canceled
25 that insurance; didn't you?

1 A. No, sir, I did not.

2 Q. Mr. Torres, where's the document that
3 shows that you had an invoice for repair on the boat?

4 A. As I stated earlier, I don't know where
5 it is.

6 Q. Now, as I understand it, the boat was
7 owned by Mr. Michael Peterson; is that correct?

8 A. As far as I know, yes.

9 Q. And you did \$1,200 worth of work on that
10 boat, and billed Lynette Torres, Lynette Manske, for
11 the work on a boat that belonged to Mr. Michael
12 Peterson?

13 A. Yes, that's true.

14 Q. The \$4,500 that Lynette applied to the
15 down payment on the Raynell boat, that was, in its
16 entirety, a loan received in repayment from Michael
17 Peterson; wasn't it?

18 Do you even know?

19 A. I don't know that the loan was for
20 Mr. Peterson; however, roughly \$1,200 --

21 MR. PETERSON: Objection, your Honor.
22 He's already testified that he doesn't know what the
23 loan was.

24 THE WITNESS: Yes, I do know what the
25 loan is, because Lynette told me.

1 what it; is that you want?

2 A. For my labor and the expenses I put into
3 the home, I feel that I'm entitled to something out of
4 it.

5 Q. What? Cash, you mean?

6 A. Swap, trade, whatever.

7 Q. Did you pay rent when you lived in the
8 home?

9 A. Now, whose home are you talking about,
10 mine --

11 Q. Lynette's.

12 A. Did I pay rent? You mean, did I make
13 her a monthly rent check?

14 Q. Yes, did you do that?

15 A. No, I give her my paycheck every two
16 weeks.

17 Q. Did you pay a mortgage?

18 A. I helped with the mortgage payments,
19 yes.

20 Q. You think you should live there for
21 free, or do you think that while you are living there
22 it's appropriate, since you are married to her, to
23 contribute to the improvement of the home and the
24 maintenance of the home, which is your position?

25 A. I think, according to the income tax

1 that we filed, it shows I contributed quite a bit.

2 Q. I didn't ask you that. I asked you
3 which is your position: Should you live there for
4 free, or should you contribute to the maintenance and
5 improvement of the home while you are living there and
6 married to her?

7 A. While I was living there, I did
8 contribute to the maintenance and to the care of the
9 home.

10 Q. But not for free. You should be
11 compensated, according to your testimony here today;
12 is that correct?

13 A. You are saying she should be
14 compensated. Is it good enough for her, but not for
15 me?

16 Q. How is she being compensated? She's
17 offered you a home; hasn't she? You can have the home
18 and take the mortgage. That way you can get a hundred
19 percent of your improvement value; can't you?

20 A. Why do I want a home that still owes
21 \$11,000 more than what it is worth?

22 Q. That's my point. How did you improve
23 the value of this home? To what are you entitled?
24 You didn't do anything except live there and
25 contribute to the maintenance and improvement of the

1 home. That's all you did; isn't it?

2 A. It's some pretty hard maintenance.

3 Q. That's why we are here in court, today,
4 because you insist on being compensated for a place
5 where you lived; isn't that true?

6 MR. HARTWIG: Objection, your Honor.
7 This is argumentative.

8 THE COURT: Sustained.

9 MR. PETERSON: Now, as to the hearing in
10 front of the Commissioner, when we left that hearing,
11 you, in fact, took the position that you'd never
12 settle the case unless you got the boat; wasn't that
13 your position when we walked out into the hall?

14 A. No, sir, it wasn't.

15 Q. Did you tell Mr. Hartwig: "Let's go to
16 trial. We'll get the boat at trial"; isn't that what
17 you said to Mr. Hartwig out in the hall?

18 A. I don't believe I did, no.

19 Q. And you refused to settle under any
20 circumstance, under any conditions, that didn't give
21 you the boat, at that time; isn't that accurate?

22 A. No, we've tried to settle with you a
23 number of times.

24 Q. With \$14,000 in cash for improvements in
25 the house?

1 A. I didn't say I wanted \$14,000 in cash.

2 Q. How much did you want?

3 A. I haven't put a dollar value on it.

4 Q. But you've always wanted compensation
5 and would not settle this case without compensation;
6 isn't that accurate?

7 A. No, sir, it is not.

8 MR. PETERSON: I don't have any more
9 questions, your Honor.

10 THE COURT: Any redirect?

11 MR. HARTWIG: No redirect.

12 THE COURT: If the home were sold and
13 resulted in a loss, would you have been willing to pay
14 half of the loss?

15 THE WITNESS: Yes, I would have.

16 THE COURT: Did you offer to put the
17 home up for sale and either take half the gain or half
18 the loss?

19 THE WITNESS: No, sir, I did not offer
20 to put the home up for sale. Like I say, the home was
21 in Lynette's name. The home is hers. I have no
22 argument with that. All I did is make some fantastic
23 improvements on it.

24 THE COURT: Has she offered to let you
25 have the home if you assumed the debt?