

# IN THE SUPREME COURT OF TEXAS

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No. 99-0121  
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DEANA ANN LOZANO, PETITIONER

v.

JUAN ANTONIO LOZANO, SR., BLANCA SUAREZ LOZANO, MONICA I. LOZANO,  
SANDRA WARNER, EDUARDO A. LOZANO, RESPONDENTS

=====  
ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS  
=====

**Argued on April 5, 2000**

**Per Curiam**

We grant, in part, the motion for rehearing of Blanca, Monica and Alex Lozano, withdraw our opinion dated December 14, 2000, and substitute the following in its place.

Here, we decide whether there is legally sufficient evidence to uphold a jury verdict under Texas Family Code section 42.003, which provides a cause of action to a person with a possessory right to a child against one who aids or assists in interfering with that right.<sup>1</sup>

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<sup>1</sup> § 42.003. **Aiding or Assisting Interference with Possessory Right**

(a) A person who aids or assists in conduct for which a cause of action is authorized by this chapter is jointly and severally liable for damages.

(b) A person who was not a party to the suit in which an order was rendered providing for a possessory right is not liable unless the person at the time of the violation:

- (1) had actual notice of the existence and contents of the order; or
- (2) had reasonable cause to believe that the child was the subject of an order and that the person's actions were likely to violate the order.

Deana Lozano and Juan Antonio Lozano, Jr. (“Junior”) are the parents of Bianca Lozano. When Deana and Junior separated, the court awarded Deana temporary custody of Bianca and gave Junior visitation rights. During one of those visits, Junior and Bianca disappeared, and neither has since been located. Deana sued Junior’s parents, Juan Antonio Lozano, Sr. and Blanca Suarez Lozano; and his siblings, Monica Lozano, Eduardo Lozano (“Alex”), and Sandra Lozano Warner (collectively the “Lozanos”), under Texas Family Code section 42.003 for allegedly aiding and assisting in Junior’s interference with her possessory rights. The trial court rendered judgment on the jury verdict, awarding Deana \$1,000,000 against the defendants, jointly and severally, for the interference-with-possessory-rights claim, and an additional \$1.2 million in punitive damages against the various defendants individually (\$300,000 against each parent, and \$200,000 against each sibling). The court of appeals reversed, holding that there was no evidence to support the jury’s finding regarding any of the Lozanos. 983 S.W.2d 787. We affirm in part and reverse and remand in part.

Because there is some evidence to support the jury’s determination that Blanca Lozano, Monica Lozano and Alex Lozano aided or assisted Junior in taking or retaining possession of Bianca or in concealing her whereabouts, the Court reverses the judgment of the court of appeals as to these defendants and remands the cause to that court for consideration of respondents’ remaining points of error. Because there is no evidence that Sandra Lozano Werner or Juan Lozano aided or assisted Junior in taking or retaining possession of Bianca, the Court affirms the court of appeals’ judgment that plaintiff take nothing from these defendants.

CHIEF JUSTICE PHILLIPS filed a concurring and dissenting opinion in which JUSTICE ENOCH and JUSTICE HANKINSON joined except as to Part IV(D), Monica Lozano, and Part IV(E), Alex Lozano, and in which JUSTICE BAKER and JUSTICE ABBOTT joined except as to Part IV(A), Sandra Lozano Warner, Part IV(D), Monica Lozano, and Part IV(E), Alex Lozano.

JUSTICE HECHT filed a concurring and dissenting opinion in which JUSTICE OWEN joined.

JUSTICE BAKER filed a concurring and dissenting opinion in which JUSTICE ABBOTT joined and in which JUSTICE ENOCH and JUSTICE HANKINSON joined except as to Sandra Lozano Warner.

JUSTICE O'NEILL did not participate.

JUSTICE GONZALES, who participated in the original decision in this case, resigned his office on December 25, 2000, and did not participate in the motion for rehearing.

OPINION DELIVERED: March 8, 2001.