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HEADLINE: Gilroy family putting life back together after losing 4-year-old son in DUI crash

BYLINE: By Lisa Fernandez lfernandez@mercurynews.com

For months, Jesus Cortes couldn't work. He couldn't speak without getting choked up with tears. He could barely bring himself to get out of bed in the morning.

Now, the 38-year-old Gilroy handyman is busy remodeling a home in San Jose, he's going to church on Sunday and he owns a Chihuahua puppy.

"I'm a survivor," Cortes said.

Cortes' 4-year-old son, Jose Cortes Diaz, was killed in a drunken driving crash in July, as the father unbuckled the little boy from his car seat. Cortes had pulled his truck to the side of the highway because it had been making strange noises. Another truck smashed into his, sending a toolbox from the back of Cortes' pickup flying into his son's head. The preschooler, who loved sports and Thomas the Tank Engine, died almost instantly.

And so, just waking up and making it through a normal routine are major accomplishments for Cortes and his wife, Margarita Diaz. (The Mercury News had incorrectly reported the family name as Cortez.)

"I didn't think I was ready," Cortes said. "But life is going. It's hard to wake up. But I don't want to do nothing. I have to put my energy into something."

Cortes has put some of that energy into a lawsuit filed last month in Santa Clara County Superior Court against the driver, Jimmy Francis Lee, 44, of Gilroy, and his father's company, Lee's Diesel Service, whose truck he was driving. The main claims are wrongful death and negligent entrustment of a vehicle, largely based on Lee's drunken driving history, said attorney Michael Shea Jr. of San Jose.

Shea's firm has worked closely with the Cortes-Diaz family, even paying upfront for grief counseling.

"They are just the most amazing family," Shea said. "A lot of people could never get past a loss like this. But they're working their tails off and trying to dig their way out of this cave. It's really inspiring."

Other than that, Cortes does not want to focus too much on Lee, who has been charged with second-degree murder.

The California Highway Patrol accident report shows that Lee was coming back from a heavy metal concert at the Shoreline Amphitheatre in Mountain View on July 11 when he crashed his Ford F-150 into

the back of Cortes' Chevrolet S-10 along Highway 101 near Bailey Avenue in South San Jose. Lee's blood tests showed he had nearly twice the legal limit of alcohol in his bloodstream.

Cortes, who came to California when he was 15 years old to pick fruit in Madera, is the first to acknowledge that these small steps of putting his life back together are excruciatingly hard.

He can't drive past the spot where his son was killed without feeling his heart clench, without his eyes filling with tears.

He worries about finances, too. On a recent weekday, he was painting a home and Diaz was cleaning it. But their jobs are temporary, and they don't have anything immediately lined up for the future.

He and his wife know they argue too frequently.

"We have stress," he said.

But the family is trying. They know they have to do their best for their 12-year-old daughter, Itzel, who used to share a bed with her brother in the family's tiny trailer. "Sometimes she's happy, sometimes not," Diaz said of her daughter's mood.

The entire family attends St. Mary Catholic Parish in Gilroy on Sundays and often stays afterward to attend a support group. A man who had a rare illness told his near-death experience and how he wasn't ready to let go. That story affected Cortes.

The family's new puppy, Lunar, brings a little cheer into their home. And in fact, Cortes is hoping to sell his small trailer and move to a new spot on a nearby farm, where he envisions the scenery may be more peaceful.

He and Diaz are also considering having another baby, after a year of mourning has passed for their son.

"All the time, I think about the positive," Cortes said. "I don't want to think back."

Contact Lisa Fernandez at 408-920-5002.

If you're interested IN HELPING THE CORTES FAMILY

Checks may be sent to any Bank of America.

The Gilroy branch is at 7825 Monterey St., Gilroy, CA 95020. The account number for the Jose Cortes Diaz memorial fund is 2004969920.

GRAPHIC: Margarita Cortes Diaz helps her husband, Jesus, paint a San Jose home on Dec. 2, 2010. Last July, the couple lost their 4-year-old son, Jose, when a drunk driver plowed into the back of their truck that was stalled on the shoulder of Hwy 101. The family has struggled financially and emotionally since then. Now, work has picked up and their spirits have been improving. (Gary Reyes /Mercury News)

Jesus Cortes Diaz and his wife Margarita, take a break from painting a San Jose home to play with their new dog, Lunar, on Dec. 2, 2010. Last July, the couple lost their 4-year-old son, Jose, when a drunk driver

plowed into the back of their truck that was stalled on the shoulder of Hwy 101. The family has struggled financially and emotionally since then. Now, work has picked up and their spirits have been improving. They got the dog a couple months ago and has helped in their recovery. (Gary Reyes /Mercury News)

Jose Cortes Diaz, 4, is photographed recently in front of San Jose City Hall. Jose died on July 11, 2010 when a drunk driver plowed into the family truck, knocking a tool box into his head. The family has been struggling ever since to pay for the funeral and the bills. Their truck was also destroyed and they don't have the money to replace it. (Photo courtesy of the Cortez Diaz family)

Jesus Cortes Diaz paints a San Jose home on Dec. 2, 2010. Last July, Cortez Diaz and his wife, Margarita, lost their 4-year-old son, Jose, when a drunk driver plowed into the back of their truck that was stalled on the shoulder of Hwy 101. The family has struggled financially and emotionally since then. Now, work has picked up and their spirits have been improving. (Gary Reyes /Mercury News)

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