

REPORTER'S RECORD  
VOLUME 1  
TRIAL COURT CAUSE NO. 4222-A

IN THE ESTATE OF	*	IN THE DISTRICT COURT
	*	
IDA BALDWIN DENISON	*	STONEWALL COUNTY, TEXAS
	*	
DECEASED	*	39TH JUDICIAL DISTRICT

\* \* \* \* \*

HEARING

\* \* \* \* \*

On the 18th day of December 2002, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Ira Royal Hart, Judge presiding, held at the Stonewall County Courthouse, Aspermont, Stonewall County, Texas.

Proceedings reported by stenographic method.

ORIGINAL

## A P P E A R A N C E S

## FOR THE MOVANT BOB MARSHALL DENISON:

Charles C. Self, III

Whitten & Young  
Suite 1402  
500 Chestnut Street  
Abilene, Texas

Glenn M. Karisch  
2901-D Bee Caves Road  
Austin, Texas 78746

## FOR THE DEFENDANT JOHN WAYNE DENISON:

Isaac M. Castro

Castro & Davis, L.L.P.  
212 South Central Avenue  
Hamlin, Texas 79520

## FOR JESSICA DENISON:

Kara K. Smith  
Gravley, Wheeler, McCray & Leggett, P.L.L.C.  
Suite 400  
3444 North 1st Street  
Abilene, Texas

## FOR LINDSEY LEIGH DENISON AND WESTON MARSHALL DENISON:

Mark S. Zachary  
McMahon, Surovik, Suttle, Buhrmann, Hicks & Gill  
400 Pine Street  
Suite 800  
Abilene, Texas

1 MR. SELF: No, Your Honor.

2 THE COURT: Just a minute. I sustained the  
3 objection to the attachment, but you may admit the letter.

4 MR. CASTRO: Well, there are several letters and  
5 in the --

6 THE COURT: Which ones are you objecting to?

7 MR. SELF: I am objecting to the insurance  
8 policy.

9 THE COURT: That is what I thought.

10 MR. SELF: Your Honor, if I could take a look at  
11 that, I wasn't provided with a courtesy copy of the -- Your  
12 Honor, everything else appears to have been prepared by Mr.  
13 Castro. I don't have any objection to these coming in.

14 THE COURT: All right. 3 as now comprised is  
15 admitted. Anything else, Mr. Castro?

16 (Defendant's Exhibit No. 3 was admitted into  
17 evidence.

18 MR. CASTRO: Yes, Your Honor, I would like to  
19 make a bill of exceptions for the rest of the documents that  
20 were not admitted -- objected to and not admitted.

21 THE COURT: All right. You may do so.

22 MR. CASTRO: Defendant's Exhibit 1, that is a --  
23 the notice of cancellation or renewal, and the other insurance  
24 documents that I am going to mark Defendant's Exhibit 4 that  
25 had been attached to Defendant's Exhibit 3 that were not

1 admitted as a result of the sustaining of the objection, and I  
2 now make an offer of those two documents, Your Honor.

3 (Defendant's Exhibit No. 4 was marked for  
4 identification.

5 THE COURT: All right. You have your bill, but  
6 my ruling stands. Anything else?

7 MR. CASTRO: Your Honor, yes, there is one other  
8 thing that I would like to tell the Court that after our  
9 hearing on June 3rd -- and I think Mr. Zachary can confirm  
10 this -- there was a conference between me and Mr. Bob -- John  
11 Denison, excuse me, and Mr. Zachary and Mr. Leggett, and Mr.  
12 Zachary and Mr. Leggett asked -- asked us to obtain an  
13 insurance policy on the house even though clearly the property  
14 was already --

15 THE COURT: Just a moment.

16 MR. CASTRO: -- the property was already owned  
17 by the trust, and we -- and Mr. Stanton was here as well, and  
18 we agreed to do that and therefore we obtained a policy, Your  
19 Honor.

20 THE COURT: Mr. Self?

21 MR. SELF: I am unsure whether or not this is  
22 testimony or not, Your Honor. It appears to be --

23 THE COURT: I don't guess it is.

24 MR. SELF: Well, then I am going to object to  
25 every bit of it. He is providing facts to this Court, Your

1 Honor, outside of being --

2 THE COURT: I am not considering it as  
3 testimony..

4 MR. SELF: Thank you, Your Honor.

5 THE COURT: All right. Anything else, Mr.  
6 Castro?

7 MR. CASTRO: Well, Your Honor, I will testify to  
8 those facts.

9 THE COURT: Well, you are in charge of your  
10 case.

11 MR. CASTRO: I will. I will testify to those  
12 facts.

13 THE COURT: Do you want to call yourself?

14 MR. CASTRO: Yes.

15 THE COURT: All right. Come around and be  
16 sworn.

17 ISAAC CASTRO, having been first duly sworn,  
18 testified as follows:

19 THE COURT: You may proceed by narrative form  
20 rather than question and answer. Proceed:

21 MR. CASTRO: Thank you, Your Honor.

22 Your Honor, we appeared here for a hearing to  
23 confirm the settlement agreement on June 3rd, I believe, of  
24 this --

25 THE COURT: The record shows it was on June 3rd

1 and the Court then approved the settlement.

2 MR. CASTRO: Thank you, Your Honor. After  
3 the -- after the hearing, Mr. Zachary and Mr. Leggett or  
4 both -- one or both of them approached -- approached me and  
5 Mr. Stanton and we -- we sat here at the conference table and  
6 we discussed the insurance on the Raynor courthouse.

7 Mr. Zachary and Mr. Leggett were concerned that  
8 it was not insured, and they asked us -- me and John  
9 Denison -- to obtain insurance on the property. Even though  
10 that -- according to the settlement agreement that property at  
11 that point already belonged to --

12 THE COURT: Yeah.

13 MR. CASTRO: -- the trust and Mr. Stanton made  
14 the statement that, Yes, we will take care of it, and, in  
15 fact, we did, Your Honor.

16 We obtained through Evans Insurance Agency in  
17 Hamlin a policy to cover the house, and I believe it was made  
18 effective on June 6th. And there was an issue with regard to  
19 the payment of the premium because it was no longer the  
20 estate's or John Denison's obligation.

21 After discussions among the attorneys by  
22 telephone later on, John Denison agreed to pay that part of  
23 the premium that was attributable to the time that he was  
24 in -- in the house until he vacated, and so that was done, in  
25 fact, I believe through payment of some of the royalties that

1 were paid after that. But the policy was made effective for  
2 approximately three months.

3 Later on, I received information that the policy  
4 was going to be canceled, the stated reason being that it was  
5 not -- it was no longer inhabited, and it was vacant.

6 But in any event, we did obtain the policy at  
7 the request of attorneys for -- for the children and worked  
8 out the details with regard to the payment of the premium  
9 without incident, Your Honor.

10 THE COURT: Is that the end of your testimony?

11 MR. CASTRO: Yes.

12 THE COURT: You may cross-examine.

13 CROSS-EXAMINATION

14 BY MR. SELF:

15 Q. Did you provide a copy of this binder to my client?

16 A. Not to Bob Denison, but to his attorney.

17 Q. Do you have a copy of that correspondence? I am  
18 talking about the initial June 6th binder which you are  
19 talking about, was that provided to my client, or was it, in  
20 fact, only provided to Mark Zachary? Is that correct? Do you  
21 recall that?

22 A. No, I don't recall that. I have a letter in evidence  
23 with the exhibits that were not included as a result of your  
24 objection.

25 Q. Now, you have testified that the Raynor courthouse,

1 which we have all referred to it as, was now the property of  
2 the trust. Is that right?

3 A. Correct, as of May 28th.

4 Q. Do you have a copy of the deed wherein the estate has  
5 deeded that property to the trust?

6 A. No.

7 Q. Do you have a property of any other -- or a copy of  
8 any other transfer of title document that would indicate that  
9 the title of the Raynor courthouse is in -- is in -- now  
10 titled in the trust?

11 A. No, that was -- that was to be taken care of through  
12 the judgment.

13 Q. Okay. But that hasn't happened yet, has it?

14 A. No. As a result of objections to our judgment, then  
15 no, there --

16 MR. SELF: I will object as to nonresponsive.

17 THE COURT: Overruled.

18 MR. SELF: Thank you, Your Honor.

19 Q. (By Mr. Self) Now, are you telling me then that --  
20 well, do you handle any real estate law at all?

21 A. Real estate law. I handle a lot of real estate  
22 transactions, yes.

23 Q. Okay. And you understand, of course, that for title  
24 of property to pass, it can pass by a number of ways. Is that  
25 right?



1 A. Correct.

2 Q. One of those ways, of course, is by deed. Right?

3 A. Correct.

4 Q. Another way, of course, is by adverse possession?

5 A. Correct.

6 Q. Is that right? Has title to this property passed to  
7 the trust by deed?

8 A. Not by deed. That is what I have said.

9 Q. Had it passed by adverse possession?

10 A. No, it hasn't passed by adverse possession.

11 Q. Okay. So as we sit here today, if I wanted to look  
12 up -- if I had a legal description of that property and I  
13 wanted to walk over to the county clerk's records to see who  
14 is the record owner of that property, who is the record owner  
15 of that property?

16 A. Bill Denison and Ida Denison.

17 Q. Okay. And they are both deceased. Is that right?

18 A. Correct.

19 Q. And on the date of the last of them to die, title of  
20 that property changes. Is that right?

21 A. Well, that's true with the probate having been filed  
22 I have to -- I have to correct this part. With the wills  
23 having been filed, actually title to the property would be  
24 vested in John Wayne Denison and the Bob Marshall Denison  
25 Trust.

1 Q. Okay. So property has already passed?

2 A. Yes, really in a sense it has because the wills have  
3 been admitted to probate.

4 Q. As of the day of death?

5 A. I would say so. It was when the wills were admitted  
6 to probate.

7 MR. SELF: Okay. I will pass the witness, Your  
8 Honor.

9 THE COURT: Mr. Zachary, do you have any  
10 questions?

11 MR. ZACHARY: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. ZACHARY:

14 Q. Isaac, that last statement you made where title or  
15 title vests in the heirs to an estate upon the death, that is  
16 subject to the administration of the estate. Correct?

17 A. Correct, yes.

18 MR. ZACHARY: I have no further questions.

19 THE COURT: Ms. Smith?

20 MS. SMITH: No questions, Your Honor.

21 THE COURT: All right. Do you have any further  
22 questions?

23 MR. SELF: No, sir, Your Honor.

24 THE COURT: All right. Have you got anything  
25 else you want to say?

1 MR..CASTRO: No, Your Honor.

2 THE COURT: Step down. All right.

3 MR. CASTRO: We rest, Your Honor.

4 THE COURT: All right. Any other evidence? All  
5 right. Do you wish to be heard, Mr. Self.

6 MR. SELF: Sure, Your Honor. I will try to make  
7 it very brief. I certainly appreciate the Court --

8 THE COURT: Yes, sir.

9 MR. SELF: -- the Court's time today. As I said  
10 at the very beginning, and as I hope that the Court will  
11 thoroughly read our brief, this is not a case of did we fail  
12 to ask or should we have asked. This is a case of we were  
13 supposed to be told. We have hung up somewhat in the  
14 materiality of the properties in question. Minor changes to  
15 the courthouse. It is only \$1000. The point is not the  
16 amount, Your Honor. The point of the entire presentation is  
17 the fact that that information was not disclosed to Mr.  
18 Denison and by his own testimony, uncontroverted in this case,  
19 had that information been disclosed to him, he would not have  
20 entered into this agreement.

21 The law is very clear that there must be full  
22 disclosure from the executor even in a litigation situation.

23 That is why these kind of cases are so hard, Your Honor. That  
24 is all I am going to talk about on that. I talked about it at  
25 the beginning. I believe we set forth the case that we did

1 not get disclosure. We did not get adequate disclosure.

2 The defendant has filed a response to my motion  
3 setting forth close to 20 acts that occurred based upon this  
4 agreement.

5 I submit to you, Your Honor, that a majority of  
6 these acts that occurred were, in fact, obligations of the  
7 estate to begin with.

8 It is very interesting that the first act that  
9 occurred is the dismissal of an appeal to the 11th Court of  
10 Appeals. My understanding -- and as I have informed this  
11 Court before, I am a latecomer to this deal.

12 THE COURT: That is all right.

13 MR. SELF: My understanding is that was an  
14 appeal of the granting of a temporary injunction which  
15 prohibited Mr. Demison from doing anything in regards to the  
16 estate.

17 As I understand it, that temporary injunction  
18 theoretically is still in place. At the time of these acts  
19 that temporary injunction was still in place.

20 Yes, a lot of acts were taken based upon  
21 reliance upon a mediated settlement agreement that was by its  
22 own terms to be put into final form and hasn't been.

23 We are not to be punished because they jumped  
24 the gun. That is all we are asking of this Court, Your Honor.  
25 There is also some claims in here that -- well, here that we

1 have come over here and asked for this, that now all of the  
2 tax -- that all of the costs ought to be taxed against us.  
3 That is an equitable argument, Your Honor. Equity hasn't been  
4 done in this case. Maybe not on either side. I don't know.  
5 That is for the Court to decide but equity certainly hasn't  
6 been done on that side of the room. They are not entitled to  
7 be paid every bit of cost that they have incurred. I need to  
8 address that because it was in here.

9 It is very interesting in that we have two  
10 depositions laying on the table, two depositions that were  
11 referenced in this agreement regarding water problems and the  
12 Raynor courthouse water problems.

13 Where is that deposition testimony that sets  
14 forth, oh, my goodness, there is a big problem with the water  
15 line to the Raynor courthouse? It hasn't been offered. Maybe  
16 it is going to be now, but it hasn't been to this date. Even  
17 that's not the point, Your Honor. They can take a deposition  
18 all they want to.

19 That doesn't get rid of the duty that they had  
20 to disclose to us, oh, my goodness there is a problem on the  
21 water line at the Raynor courthouse, or, oh, my goodness have  
22 you seen that courthouse since May of 2000? It is not the  
23 same as it was in May of 2000.

24 Your Honor, by law, that's the duty that they  
25 had. They didn't follow that duty and by failing to follow

1 that duty, one of the remedies of the law is we get to get out  
2 of the agreement because we didn't get full disclosure.

3 That's our position in this case, Your Honor,  
4 and, once again, we thank you for giving us the time to do  
5 this and for traveling so far to do it.

6 THE COURT: Yes, sir. Mr. Castro?

7 (Defendant's Exhibits Nos. 5 and 6 were marked  
8 for identification.

9 MR. CASTRO: Yes, Your Honor. I am not going to  
10 reiterate all of those things that Mr. John Denison did in  
11 compliance of the settlement agreement that, in fact, was done  
12 without any objection whatsoever of the other side or of  
13 anybody, but those are all listed in my response.

14 Your Honor, if -- I will offer the -- ask for  
15 leave to offer the oral deposition of Roger Parker and the  
16 oral deposition of Ned Ward as Defendant's Exhibit 5 and 6.  
17 These are the originals for the Court, but what I have stated  
18 with regard to those depositions is true.

19 I think we need to keep in mind how difficult  
20 this case has been throughout the years, Your Honor, and how  
21 difficult it will be if because of a thousand dollar life  
22 insurance policy that can easily be divided that this  
23 matter -- this settlement agreement is completely set aside,  
24 and then we start again at square one because you would have  
25 to start at the very beginning again because now we have