

CAUSE NO. 4222-A

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

EXCERPT OF PROCEEDINGS

PRETRIAL MOTION
AND

TESTIMONY OF JOHN WAYNE DENISON

MAY 24, 2001

WHEREUPON the proceedings held in the above-named cause were held on the 24th day of May, 2001, before the Honorable Judge Joseph Connally in the 39th District Court of Stonewall County, Texas, and the following is an excerpt of proceedings:

ORIGINAL

A P P E A R A N C E S

FOR THE PETITIONER BOB MARSHALL DENISON:

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FOR JESSICA DENISON:

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FOR LINDSEY LEIGH DENISON AND WESTON MARSHALL DENISON:

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I N D E X

	<u>PAGE</u>
Pretrial -----	6
 <u>JOHN WAYNE DENISON</u>	
Direct Examination by Mr. Ware -----	11
Cross-examination by Mr. Stanton -----	103
Voir Dire Examination by Mr. Ware -----	120
Cross-examination (continued) by Mr. Stanton	123
Cross-examination by Mr. Leggett -----	130
Cross-examination by Mr. Stamey -----	136
Reporter's Certificate -----	145

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>
P-1	Deed of Trust dated 3/14/96 -----	17	17
P-2	Deed of Trust dated 9/1/98 -----	20	20
P-3	Deed of Trust dated 6/10/99 -----	22	22
P-4	Real Estate Lien Note dated 6/10/99 --	34	34
P-5	Transfer of Lien dated 6/10/99 -----	36	36
P-6	Invoice from Royce Brooks Garage dated 7/16/98 -----	48	48
P-7	Copy of Check No. 629 in the amount of \$766.53 to Royce Brooks Garage dated 7/16/98 -----	49	50
P-8	Ledger - Ida Baldwin Denison Estate --	**	**
P-9	Notice of Intention to Take Oral Deposition of John Wayne Denison -----	56	56
P-10	(Withdrawn) -----		
P-11	Independent Executor's Reply to First Amended Application for Monthly Proceeds -----	63	64

NO.	DESCRIPTION	OFFERED	ADMITTED
P-12	Bank statement and various documents from Farmers National Bank relating to Ida Baldwin Denison Estate for statement period 5/31/99 to 6/30/99 -----	68	69
P-13	Bank statement and various documents from Farmers National Bank relating to Ida Baldwin Denison Estate for statement period 8/31/99 to 9/28/99 -----	82	82
P-14	Bank statement and various documents from Hamlin National Bank relating to Ida Baldwin Denison Estate for statement period 9/30/99 to 10/29/99 -----	85	86
P-15	Checks and various documents relating to Ida Baldwin Denison Estate -----	86	87
P-16	Bank statement and various documents relating to Ida Baldwin Denison Estate for statement period 9/30/99 to 10/29/99 -----	86	87
P-17	Bank statement and various documents from Farmers National Bank relating to Ida Baldwin Denison Estate for statement period 8/1/99 to 8/31/99 -----	88	89
P-18	Bank statement and various documents from Farmers National Bank relating to Ida Baldwin Denison Estate for statement period 6/30/99 to 8/1/99 -----	88	89
P-19	(Withdrawn) -----		
P-20	Loan documents related to Ida Baldwin Denison Estate -----	**	**
P-21	Notice of Federal Estate Tax Lien Under Internal Revenue Laws -----	**	**
P-22	(Withdrawn) -----		
P-23	Ledger of checks written from 6/26/8 through 7/24/98 -----	102	102
P-24	Estate of Ida Denison Significant Disbursements -----	**	**

1 A. Correct.

2 MR. CASTRO: Your Honor, Petitioner's Exhibit
3 No. 3 was a deed of trust.

4 MR. WARE: Did I say 3? I'm sorry. No. 9.
5 Thank you.

6 Q. (By Mr. Ware) No. 9, but it is No. 3 on Exhibit
7 No. 9. Do you see that?

8 A. Yes.

9 Q. You were to bring ledgers.

10 A. Correct.

11 Q. You didn't bring any, did you?

12 A. No, I did not. That one I did not.

13 Q. All right. And that ledger was not produced until
14 February of this year, correct -- excuse me -- April 30th of
15 this year?

16 A. Somewhere in there probably.

17 Q. Now, let's talk about -- let's try to zero in on the
18 year 1999. Would you do that with me, please? Okay?

19 A. Okay.

20 Q. Rather than go back through '97, '98, '99, and 2000,
21 and now 2001, let's focus on the year 1999. Okay?

22 A. Okay.

23 Q. Try to save the Court a little time here. In some
24 earlier discovery, you have stated in answers to that
25 discovery that the average monthly income for that ranch was

1 \$6,000. Do you recall that?

2 MR. STANTON: I'm going to object, if this is
3 some kind of impeachment, for the reason that it's not proper.
4 He must be told the date, time, and place the statement was
5 made and be confronted with it.

6 THE COURT: I'll sustain the objection. I'll
7 ask you to rephrase it. Just ask, if you would, what the
8 average monthly income is.

9 Q. (By Mr. Ware) Do you know the average monthly income
10 of the ranch?

11 A. Are we referring back to 1999?

12 Q. Yes, sir.

13 A. At that time I cannot tell you without looking.

14 Q. Do you know about 1998?

15 A. In 1998?

16 Q. I know I said 1999, but let me just ask you about
17 '98. Do you know what the average monthly income was?

18 A. It would be the same, sir. I would have to look back
19 at the average income. It changes so much.

20 Q. Have you had an accountant?

21 A. Excuse me?

22 Q. Has the estate had an accountant?

23 A. Yes.

24 Q. Let me show you, if I could --

25 THE COURT: I want to interrupt you. When you

1 ask about average income, are you including the oil and gas
2 runs or just the ranching operation?

3 MR. WARE: Well, first of all, let me ask him
4 about the average monthly expenses, if I could. That would be
5 the easier way to go about this.

6 (Petitioner's Exhibit No. 10 marked.)

7 Q. (By Mr. Ware) Petitioner's Exhibit No. 10 let me
8 show you for the purposes of identification. Can you identify
9 that, please?

10 A. I don't know if I've seen this before. I'm sorry. I
11 probably have.

12 Q. Well, did you have anything prepared for application
13 for a loan?

14 A. Yes.

15 Q. And where did that information come from when you
16 applied for a loan?

17 A. It was based -- all of our loan information was based
18 on overall from the past of my mom's at the time and also at
19 the time that we were doing things.

20 Q. Well, your mom had already died, unfortunately, in
21 July of 1997.

22 A. Right.

23 Q. Is that correct?

24 A. Correct.

25 Q. But we're talking now about a year later nearly in

1 1998.

2 A. Right.

3 Q. And you had applied for a loan, had you not --

4 A. Correct.

5 Q. -- in 1998?

6 A. Correct.

7 Q. Do you recall representing to your certified public
8 accountant what your average monthly expenses were in 1998?

9 A. I don't recall, but I'm sure that I did because
10 this -- this indicates that I did right here.

11 Q. Well, does this document refresh your recollection as
12 to the average monthly expenses that were incurred by the
13 ranch in 1998?

14 A. I'm sure that was -- that's what I indicated.

15 Q. To your CPA?

16 A. To my CPA, yes.

17 Q. What was his name?

18 A. Ed Phillips.

19 Q. Is he in the courtroom?

20 A. Yes, he is.

21 Q. Okay. So you can or you cannot identify this
22 document?

23 A. Sir, I don't remember the copy.

24 (Petitioner's Exhibit No. 11 marked.)

25 Q. (By Mr. Ware) Let me show you Petitioner's Exhibit

1 No. 11 for the purpose of identification. I asked you about
2 your representation in earlier discovery documents as to your
3 average -- the ranch's average monthly income. Do you recall
4 that?

5 A. Correct.

6 Q. I want you to look at this document of 1999, if you
7 would, please.

8 A. Okay.

9 Q. Does this refresh your recollection as to any
10 representation that has been made by you or your attorney on
11 your behalf as to the average monthly income of the ranch?

12 MR. STANTON: Your Honor, I'm going to object to
13 him testifying or talking about what's in an exhibit until it
14 is just identified, if it can be, and given to us to object to
15 or not object to as opposed to testifying or asking him to
16 testify about what's in the document until it's in evidence.

17 MR. WARE: And, Your Honor, I haven't asked him
18 to do that. I merely asked him if it refreshed his
19 recollection.

20 THE COURT: Then I will ask that you show it to
21 other counsel.

22 Q. (By Mr. Ware) All I'm asking you -- I'm not asking
23 you to tell me what that is because I haven't offered it.
24 Does it refresh your recollection?

25 A. Yes, I guess it does.

1 Q. Do you now recall what you have represented in the
2 past was the average monthly income for the ranch, having
3 looked and refreshed your recollection from Petitioner's
4 Exhibit No. 11?

5 A. In No. 11 saying -- yes, yes.

6 MR. WARE: We would offer Petitioner's Exhibit
7 No. 11, Your Honor.

8 MR. STANTON: I'm going to object to it. One,
9 it's not identified. Two, he asked the witness only if it
10 refreshed his recollection. Three, the witness said he
11 guessed it did; therefore, it's based on conjecture. I'll
12 object for those reasons. It's also hearsay.

13 MR. WARE: Your Honor, I can't identify it until
14 it's entered into evidence. So his first objection was it was
15 not yet entered into evidence, and he objected to me talking
16 about what it was. Now he's saying he wants me to talk about
17 what it is, but it's not yet in evidence. We reurge our
18 proffer.

19 THE COURT: Well, I want to move along to the
20 substance of this, and I'm going to allow it to come in and
21 see if we can -- can you tell us now what you -- what the
22 average income of the ranch was in 1999, Mr. Denison?

23 THE WITNESS: In 1999, sir, the average -- the
24 income changes from month to month, and if I indicated that
25 there, then that's what it was at that time, sir.

1 THE COURT: And what was the figure?

2 THE WITNESS: I --

3 MR. WARE: Your Honor, may I just ask the Court
4 to take judicial notice of this document? It's filed of
5 record in the file.

6 THE COURT: It's part of the -- I'll take
7 judicial notice of the contents of the file.

8 MR. WARE: Thank you.

9 THE COURT: And the independent executor's reply
10 to an amended application states that the average expenses of
11 the estate are \$6,761; the income is \$4,500.

12 MR. WARE: Thank you, Your Honor. So I will
13 withdraw this -- no, I guess I would leave it in.

14 THE COURT: I think it's in.

15 (Petitioner's Exhibit No. 11 admitted.)

16 MR. STANTON: May we please see that since the
17 judge has admitted it and taken judicial notice of it as well?

18 THE COURT: I'm sorry. I thought you had and
19 you objected and I let it in.

20 MR. STANTON: I didn't look at it, Your Honor,
21 just for the purposes of looking at the expenses and the
22 income. Thank you very much.

23 THE COURT: Now, I've still got my question.
24 Does that \$4,500 figure include the runs on oil and gas?

25 THE WITNESS: Yes, sir, it does.

1 Q. (By Mr. Ware) Now, that representation of average
2 monthly income, \$4,500 that was represented by your counsel,
3 Isaac Castro, in the independent executor's reply to first
4 amended application for monthly proceeds, was not correct, was
5 it?

6 A. I --

7 Q. \$4,500 a month wasn't even close to the average
8 monthly income of the ranch in 1999, was it?

9 A. Sir, yes, it would have to be.

10 Q. Okay.

11 MR. CASTRO: Is that in evidence, Your Honor?

12 THE COURT: I let it in.

13 MR. CASTRO: Do you have it?

14 THE COURT: No, I don't have it, but I let it in
15 for the purposes of -- Mr. Ware has furnished it to the
16 reporter now.

17 Q. (By Mr. Ware) Now, have you paid for fuel for the
18 vehicles out of the ranch estate?

19 A. Yes.

20 Q. Do you pay for fuel for the Cadillac out of the ranch
21 estate?

22 A. On estate business, yes.

23 Q. Do you buy merchandise at convenience stores out of
24 the ranch estate?

25 A. Yes.

1 Q. Do you buy merchandise at Wal-Mart out of the ranch
2 estate?

3 A. Groceries at Wal-Mart.

4 Q. You pay for groceries out of the ranch estate?

5 A. Yes.

6 Q. Do you pay for liquor out of the ranch estate?

7 A. No, sir, I do not drink.

8 Q. What is Mo's?

9 A. Mo's is a liquor store.

10 Q. Well, are you telling the Court here that you have
11 not written checks on a ranch estate to Mo's?

12 A. Yes, I have.

13 Q. You have?

14 A. Yes.

15 Q. Is that for ranch business?

16 A. Yes, it is.

17 Q. I see. Okay.

18 A. That's our local -- quarter of a mile from our home
19 that -- we live in the country. That's to -- it's so close
20 it's like a convenience store, for Dr. Peppers and things.

21 Q. You don't buy alcohol there?

22 A. No, sir, I do not drink.

23 (Petitioner's Exhibit No. 12 marked.)

24 Q. (By Mr. Ware) Now, Mr. Denison, I want to ask you,
25 please, if we could -- as I said, I want to focus on 1999, if