

A P P E A R A N C E S

FOR THE PETITIONER BOB MARSHALL DENISON:

Mr. Travis S. Ware

Ms. Suzie D. Shay

1116 Broadway, Suite C

Lubbock, Texas 79401

FOR THE RESPONDENT JOHN WAYNE DENISON:

Mr. Isaac M. Castro

Castro & Davis, L.L.P.

212 South Central Avenue

Hamlin, Texas 79520

Mr. L. Vance Stanton

8330 Meadow Road, Suite 226

Dallas, Texas 75231

FOR JESSICA DENISON:

Mr. Kenneth G. Leggett

Gravley, Wheeler, McCray & Leggett

3444 North 1st Street, Suite 401

Abilene, Texas 79601

FOR LINDSEY LEIGH DENISON AND WESTON MARSHALL DENISON:

Mr. Frank R. Stamey

McMahon, Surovik, Suttle, Buhrmann, Hicks & Gill

400 Pine Street, Suite 800

Abilene, Texas 79601

1 (Whereupon the following is an excerpt of
2 the proceedings that were held in the
above-named cause:

3 THE COURT: Would all counsel identify
4 themselves for the record? We've got Mary Ross being our
5 reporter today.

6 MR. WARE: I'm Travis Ware. I am co-counsel
7 with Suzie Shay for the applicant for this injunction, Bob
8 Denison.

9 MR. CASTRO: Isaac Castro, Your Honor, attorney
10 for John Wayne Denison, independent executor of the estate of
11 Ida Baldwin Denison.

12 MR. STANTON: Good morning. I am Vance Stanton.
13 I'm attorney for John Denison, independent executor and
14 trustee of the estate of Ida Baldwin Denison. I'm co-counsel
15 with Mr. Castro.

16 MR. LEGGETT: My name is Ken Leggett, Your
17 Honor, and I represent Jessica Denison.

18 MR. STAMEY: Your Honor, I'm Frank Stamey, and I
19 am the ad litem for Weston Denison and Lindsey Denison.

20 THE COURT: Thank you all.

21 Cause No. 4222-A, on the motion of the -- of
22 John Morrison Denison -- Bob Marshall Denison. Are y'all
23 ready to proceed?

24 MR. WARE: Yes, Your Honor, we are.

25 THE COURT: Mr. Castro, are you ready?

1 MR. CASTRO: Your Honor, we're forced to
2 announce not ready for the reason that the proper party to
3 this action is not before the Court.

4 This application for temporary injunction and
5 permanent injunction that was filed by Bob Marshall Denison
6 was filed against John Wayne Denison individually, who is not
7 a party to the action at all. He has not been sued in his
8 capacity that he's been serving in and capacity that he's been
9 sued under in the motion to -- I've got that attached to my
10 answer, Your Honor -- in the motion to remove independent
11 executor/trustee, which that's the motion or suit that forms
12 the basis of this entire lawsuit that's pending before this
13 Court now.

14 And the application for injunction that's been
15 filed -- well, the original application was filed in January,
16 but the amended application that was filed about a week or so
17 ago still does not name him in his capacity as an independent
18 executor or as trustee, but names him individually. And for
19 that reason, Your Honor, we're not ready to proceed.

20 MR. WARE: May I respond to that, Your Honor?

21 THE COURT: Let me ask Mr. Castro -- otherwise,
22 Mr. Castro, have you had proper notice, other than the
23 misnomer?

24 MR. CASTRO: Other than the fact that he was
25 sued in his -- Your Honor, this application in his individual

1 capacity, we have had notice of this case, yes, Your Honor.

2 THE COURT: Okay. And you're otherwise ready?

3 MR. CASTRO: Otherwise, I'm ready.

4 THE COURT: All right. Mr. Ware?

5 MR. WARE: Then we would, if the Court deems it
6 necessary, Your Honor, respectfully move for a trial amendment
7 under Rule 66 of the Texas Rules of Civil Procedure, which
8 would entitle us to an amendment as to either form or
9 substance.

10 There is no possible way, as Mr. Castro has
11 admitted here before the Court, that he is not ready. There
12 is no possible way that this would cause him any prejudice or
13 surprise if the Court permits the amendment and the
14 substitution of the words "John Wayne Denison, an individual
15 and as independent executor" of that estate.

16 THE COURT: I'll allow the trial amendment.

17 MR. WARE: Thank you, Your Honor.

18 THE COURT: And you can proceed.

19 MR. WARE: Thank you, Your Honor. We would call
20 John Wayne Denison. And, oh, before I forget, may we have the
21 rule invoked, please, Your Honor?

22 THE COURT: Yes, sir. How many witnesses do you
23 have? I'm not going -- just off the bat on my own motion, I'm
24 not going to invoke the rule as to expert witnesses.

25 MR. WARE: I understand.

- 1 A. Yes, that's correct.
- 2 Q. How long have you been married to Sonia Denison?
- 3 A. For 19 years.
- 4 Q. Do you have any children?
- 5 A. Yes, three children.
- 6 Q. What are their names, please?
- 7 A. Brittany and Chelsey and Briana.
- 8 Q. Now, just to set the background here, if I could,
- 9 please, your parents were whom, please?
- 10 A. Billy Wayne and Ida Denison.
- 11 Q. Okay. And who was the last to pass away?
- 12 A. My mother, Ida Denison.
- 13 Q. And do you recall the date she passed away?
- 14 A. It was July the 26th, '97.
- 15 Q. Did she leave a will?
- 16 A. Yes.
- 17 Q. And were you named the independent executor of that
- 18 will?
- 19 A. That's correct.
- 20 Q. Were you also named trustee of a trust?
- 21 A. That's correct.
- 22 Q. And that trust was to benefit whom?
- 23 A. The trust was to benefit Bob Denison, if I understand
- 24 you correctly.
- 25 Q. And is this Bob Denison --

1 A. Correct.

2 Q. -- sitting next to me? Now, you and he are brothers.
3 Is that correct?

4 A. Yes, half brothers, yes.

5 Q. And when the -- when was the will admitted to
6 probate? Do you recall?

7 A. Admitted to probate?

8 Q. Well, when was it probated? How is that?

9 A. I'm not sure if I understand.

10 Q. When was -- when was the will probated?

11 A. I was -- was I appointed independent executor? Is
12 that the time you mean?

13 THE COURT: Yes.

14 A. That was in August, August the 26th, I believe, of
15 '97.

16 Q. (By Mr. Ware) Okay. That would be, to the day,
17 exactly a month later. Is that correct?

18 A. Yes, I believe that's correct.

19 Q. Now, with respect to your duties as trustee, did you
20 ever set up a trust?

21 A. Set up a trust?

22 Q. Did you ever organize or set up a trust?

23 A. I had discussed the trust with my CPA and what we
24 would need to do to set the trust up and --

25 Q. Did you set up an accounting procedure?

1 A. Accounting procedure?

2 Q. Yes, sir.

3 A. We had discussed various things about procedure.

4 Q. Mr. Denison, my question is --

5 A. If I understand you right.

6 Q. -- did you set up an accounting procedure?

7 A. Well, I'm not sure I understand you right, sir.

8 Q. Well, as independent executor, you knew, did you not,

9 that you were to maintain some form of accounting for the

10 moneys going in or going out of that ranch, did you not?

11 A. That is correct.

12 Q. Did you have an inventory done upon your mother's
13 death during the period during which the will was -- or the
14 application was made for probate until the time it was
15 probated?

16 A. An inventory and appraisalment, yes.

17 Q. In that inventory and appraisalment, did you inventory
18 everything?

19 A. Yes, to my knowledge.

20 Q. Including the personal items that were contained in
21 your parents' home?

22 A. The home -- the contents of the home?

23 Q. Yes.

24 A. I believe it was. I guess it was.

25 Q. You don't know?

1 A. I'm -- we had taken everything that was on the
2 estate. And the home and the contents, I'm not clear without
3 looking at the inventory and appraisement item by item what
4 was on there.

5 Q. Your parents' personal possessions, were they listed
6 item by item? I'm talking about furnishings, antiques, you
7 know, things that were important to your parents and to you
8 and your brother growing up.

9 A. Without looking at the inventory and appraisement,
10 sir, it would be --

11 Q. You don't know?

12 A. I can't -- I can't recall from what -- what we put on
13 the inventory and appraisement. Everything at the house and
14 all that should have been on there on the inventory and
15 appraisement.

16 Q. Now, at the time of your parents' death or at the
17 time of Ida's death, what was owed by the estate to the
18 Aspermont bank?

19 A. What was owed?

20 Q. How much?

21 A. I believe it -- it was \$447,000, if I'm correct, that
22 they owed at the time of their death, not including medical
23 bills and local outstanding debts and things like that.

24 Q. How much did you say?

25 THE COURT: 447.



IN THE ESTATE OF	\$	IN THE COUNTY COURT
	\$	
IDA BALDWIN DENISON,	\$	OF
	\$	
DECEASED	\$	STONEWALL COUNTY, TEXAS

FIRST AMENDED
INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Date of Death: July 27, 1997

The following is a full, true, and complete Inventory and Appraisement of all personal property and of all real property situated in the State of Texas, together with a List of Claims due and owing to this Estate as of the date of death, which have come to the possession or knowledge of the undersigned.

INVENTORY AND APPRAISEMENT

SEPARATE PROPERTY

VALUE

1. REAL PROPERTY:

Parcel #1 \$ 47,170.00
LEGAL DESCRIPTION:
327 acres, H&TC Survey, Block D, Section 15,
Block D, Tract 1, Stonewall County, Texas

Parcel #2	\$ 36,740.00
LEGAL DESCRIPTION:	
250 acres, H&TC Survey, Block D, Section 49, Block D, Tract 49, Stonewall County, Texas	

Parcel #3 \$ 64,030.00
LEGAL DESCRIPTION:
House located on one acre, Block 9, Section
1, Block 9, Tract 1, Stonewall County, Texas

Parcel #4 \$ 500.00
LEGAL DESCRIPTION:
8.25 acres, H&TC Survey, Block D, Section
50, Block D, Tract 50, Stonewall County,
Texas

Parcel #5 \$ 930.00
LEGAL DESCRIPTION:
15.5 acres, H&TC Survey, Block D, Section
51, Stonewall County, Texas

FILED
County/District Court
Stonewall Co. Texas

FEB 10 1999

Time, at 10:00 AM
 BETTY L. SMITH, Clerk
B. L. Smith Clerk/Deputy

Parcel #33		\$ 9,061.00
LEGAL DESCRIPTION:		
Undivided .1666 Interest in 110.0 acres, ID:		
R012603, R-12-0014-000-0005 AW0014 Zarza, P.		
Survey, Williamson County, Texas		
Parcel #34		\$ 1,500.00
LEGAL DESCRIPTION:		
Abstract 906, Block 3, Lot 1 and part of Lot		
2, Mason Addition Rule, Haskell County,		
Texas		
2. HOUSEHOLD FURNISHINGS		\$ 2,500.00
3. MOTOR VEHICLES:		
Vehicle #1		
Description: 1992 Chevrolet Pickup		\$ 6,500.00
Vehicle #2		
Description: 1987 Ford Pickup		\$ 2,000.00
Vehicle #3		
Description: 1985 Lincoln		\$ 1,500.00
Vehicle #4		
Description: 1979 Ford Pickup		\$ 250.00
Vehicle #5		
Description: 1977 Chrysler		\$ 800.00
Vehicle #6		
Description: 1940 Chevrolet		\$ 800.00
4. CASH IN BANKS:		
Account #1		
Institution: First National Bank		\$ 11,853.00
Aspermont, Texas		
Account type: checking		
Account/CD No: 31055		
Account #2		
Institution: First National Bank		\$ 2.00
Aspermont, Texas		
Account type: checking		
Account/CD No: 359275		

Respectfully submitted,

John Wayne Denison
JOHN WAYNE DENISON
Independent Executor

CASTRO & DAVIS
212 South Central
P.O. Box 608
Hamlin, Texas 79520
915/576-2797
FAX # 915/576-2799

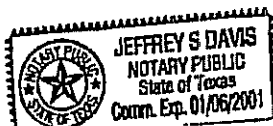
BY: Isaac M. Castro
ISAAC M. CASTRO
Attorney for Estate
State Bar No.: 03997450

STATE OF TEXAS §
 §
COUNTY OF STONEWALL §

I, JOHN WAYNE DENISON, Independent Executor of the Estate of Ida Baldwin Denison, Deceased, having been duly sworn, hereby state on oath that the said Inventory and list of claims are a true and complete statement of property and claims of the estate that have come to my knowledge.

John Wayne Denison
JOHN WAYNE DENISON
Independent Executor

SWORN TO and SUBSCRIBED BEFORE ME by JOHN WAYNE DENISON, this _____ day of _____, 1999, to certify which witness my hand and seal of office, in the capacity therein stated.



Jeffrey S. Davis
Notary Public, State of Texas

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

CAUSE NO. 4222-A

BOB MARSHALL DENISON

* IN THE DISTRICT COURT

VS.

*

*

* STONEWALL COUNTY, TEXAS

JOHN WAYNE DENISON, AS
INDEPENDENT EXECUTOR OF THE
ESTATE OF IDA BALDWIN
DENISON, DECEASED

*

*

*

* 39TH JUDICIAL DISTRICT

PRETRIAL HEARING

On the 13th day of May, 2002, the following
proceedings came to be heard in the above-entitled and
numbered cause before the Honorable Ira Royal Hart, Senior
Judge sitting in the 39th Judicial District Court, held in
Aspermont, Stonewall County, Texas:

Proceedings reported by machine shorthand.

COPY

1 from March 31st, 2001 to April 30th, 2002, and that is
2 also a way that the accounting is deficient.

3 THE COURT: Well, he swears that this is the
4 debts that have been paid through April 30th. Any other
5 objections? I assume that -- I have to -- that's his
6 report. I mean, you can --

7 MR. ZACHARY: Those are my two objections,
8 Your Honor.

9 THE COURT: Okay. All right. Thank you.
10 All right.

11 Now, we'll go to Ms. Shay's objections. What
12 are your objections to the accounting?

13 MS. SHAY: Your Honor, I would have the same
14 objections as Mr. Zachary. In addition to that, I believe
15 when we were here on the pretrial hearing, the Court
16 indicated that the defendant would produce a listing of
17 all inventory, all personal property which was owning to
18 the estate at the time of death. And also, current lists
19 of personal property that are still in the estate.

20 THE COURT: Well, the statute provides that
21 the property belonging to the estate which has come into
22 the hands -- should be specified. That's not in here?

23 MS. SHAY: Your Honor, it does not --
24 basically, what it does is say, look at the amended
25 inventory. I have no idea what that was. If it's the

1 last thing that I've seen, it's not sufficient.

2 THE COURT: Let me take that up. Mr. Castro,
3 again, it says it doesn't comply with number one of
4 Article 149(a), that you did not list the property
5 belonging to the estate which has come into the hands of
6 the executor.

7 MR. CASTRO: Your Honor, we did reference the
8 amended inventory, appraisement, and list of claims that
9 was approved by the county judge without any objection
10 whatsoever of any party. And so that was the property
11 that was on hand. Now, I will admit that every dish towel
12 is not listed in there.

13 THE COURT: Well, is there any property that
14 has come into -- excuse me. When was that filed?

15 MR. CASTRO: Oh, Your Honor, that's --

16 THE COURT: And the next question is --

17 MR. CASTRO: -- three years ago probably.

18 THE COURT: -- has any property come into his
19 hands since then?

20 MR. CASTRO: Other than what we've stated
21 here in this accounting, Your Honor, no.

22 THE COURT: What, again, about her objection
23 that the accounting does not come down to April the 30th
24 of '02?

25 MR. CASTRO: It does, Your Honor, except for

1 the ledger, but it does come down to April 30th. I
2 contacted everyone that I knew of that was owed any kind
3 of money. I determined from the executor what property
4 was in his hands. So it is current through the end of
5 April.

6 THE COURT: Okay. All right. What's the
7 next objection?

8 MS. SHAY: I guess the other objection that I
9 would have would probably be more of substance than
10 anything. Under the provision, it's paragraph seven, with
11 regard to the debts and the expenses which have not been
12 paid that are allegedly presently due and owing by the
13 estate. And again, we've got various attorneys' fees and
14 issues like that. And I believe there's a good faith
15 requirement on the executor to show that he has defended
16 this action in good faith. So whether or not attorneys'
17 fees to Mr. Castro are going to be owing is yet to be
18 seen.

19 THE COURT: So what's the objection? I don't
20 quite understand the objection.

21 MS. SHAY: I guess the objection is that we
22 challenge those expenses.

23 MR. CASTRO: That's an objection to the
24 accounting, Your Honor.

25 THE COURT: That's what I was trying to say.