

## 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

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

## FOR THE PLAINTIFF:

Ms. Suzie Shay  
LAW OFFICES OF TRAVIS WARE  
1116 Broadway, Suite C  
Lubbock, Texas 79401  
Phone: (806) 763-5044  
Fax: (806) 763-7536

## FOR THE DEFENDANT:

Mr. Vance Stanton  
ATTORNEY AT LAW  
10723 Preston Road  
Box 105  
Dallas, Texas 75230  
Phone: (214) 360-9833  
Fax: (214) 750-4758

## FOR THE DEFENDANT:

Mr. Isaac Castro  
LAW OFFICES OF ISAAC CASTRO  
SBOT No. 03997450  
212 S. Central  
Hamlin, Texas 79520  
Phone: (915) 576-2797  
Fax: (915) 576-2799

## GUARDIAN AD LITEM:

Mr. Mark S. Zachary  
McMAHON LAW FIRM  
SBOT No. 22237450  
400 Pine Street, Suite 800  
Abilene, Texas 79604  
Phone: (915) 676-9183  
Fax: (915) 676-8836

## GUARDIAN AD LITEM:

Mr. Kenneth G. Leggett  
GRAVLEY, WHEELER, McCRAY & LEGGETT, PLLC  
SBOT No. 12171375  
3444 North First Street, Suite 400  
Bank One Building  
Abilene, Texas 79603  
Phone: (915) 677-4190  
Fax: (915) 677-4195

## P R O C E E D I N G S

MAY 13, 2002

(1:27 p.m.)

THE COURT: The Court will come to order, please. I believe it's time. Let's see. For purposes of docket entry, let me call the roll here. Mr. Castro is here, is he not?

MR. CASTRO: Yes, Your Honor.

THE COURT: And Mark Zachary is here?

MR. ZACHARY: Yes, I'm here, Your Honor.

THE COURT: All right. And let's see. Suzie Shay and she's here? All right.

MS. SHAY: Yes, Your Honor.

THE COURT: And Mr. Leggett?

MR. LEGGETT: Ken Leggett. I'm here, Your Honor.

THE COURT: Ken Leggett is here. And let's see. Who else do we have now?

MR. CASTRO: Vance Stanton.

MR. STANTON: Please the Court, I'm Vance Stanton.

THE COURT: How do you spell your last name?

MR. STANTON: S-t-a-n-t-o-n.

THE COURT: You're with Mr. Castro, right?

MR. STANTON: Yes, sir, that's correct.

1 THE COURT: All right. How are you today?

2 Glad to have you, too.

3 And you're with Ms. Shay, aren't you? Or  
4 she's with you?

5 MR. DENISON: Yeah.

6 THE COURT: All right. Did I miss anybody  
7 then? All right. I appreciate y'all being here today.

8 Of course, my main concern is to try to keep  
9 the case moving along, you know. I suppose we can take  
10 things up the way the clerk has filed them. Let me see  
11 what we got here now.

12 I was trying to think about the case without  
13 looking at the file. Did you put it on the jury docket?

14 MS. SHAY: Yes, Your Honor.

15 THE COURT: And what are our jury questions  
16 primarily?

17 MS. SHAY: Well, there's going to be issues  
18 of the removal of the executor, and then also, the breach  
19 of fiduciary duty, constructive fraud, exemplary damages.

20 THE COURT: Okay.

21 MS. SHAY: Possibly, the accounting.

22 THE COURT: Okay. Have there ever been any  
23 commissioners appointed on the thing?

24 MR. STANTON: No, sir.

25 THE COURT: Shouldn't there be some

1 commissioners appointed?

2 MR. STANTON: Well, this case was last set  
3 for partition last September and we believe there should  
4 be some commissioners appointed. It's just almost out of  
5 hand.

6 THE COURT: What do you think about that?  
7 Why shouldn't you have commissioners appointed? Go ahead.

8 MS. SHAY: Well --

9 THE COURT: We're on the record.

10 MS. SHAY: Well, Your Honor, we don't believe  
11 that the will provides for a distribution without the  
12 trust being funded first.

13 THE COURT: Well, I know that will seems, to  
14 me, very unusual, but as I understand the will, one son  
15 gets half the property, then the other property is in  
16 trust. And so there's got to be a division, doesn't  
17 there?

18 MR. ZACHARY: Your Honor, if I may, there  
19 hasn't been a distribution into that trust yet.

20 THE COURT: I know it.

21 MR. ZACHARY: Yes, sir.

22 THE COURT: But how can you have a  
23 distribution before you have a partition?

24 MR. ZACHARY: Because the will specifically  
25 says an undivided one-half interest in the property shall

1 be --

2 THE COURT: Oh, it says undivided?

3 MR. LEGGETT: Undivided.

4 MR. ZACHARY: Yes.

5 MS. SHAY: Yes, Your Honor.

6 MR. ZACHARY: Yes, it does. It sure does.

7 So I think a partition, at this point, would be premature.

8 THE COURT: So you don't think we need any  
9 commissioners now?

10 MR. ZACHARY: That's set for hearing next  
11 week, but I don't think there is. I think they've got to  
12 fund that trust before you can do a partition. The will  
13 specifically says an undivided one-half interest.

14 THE COURT: Okay. Go ahead, Mr. Castro.  
15 What were you going to say?

16 MR. CASTRO: Your Honor, I think that there  
17 is -- it's not premature. In fact, that's exactly what  
18 Bob Denison's partition for accounting has asked for and  
19 now that is set for today.

20 THE COURT: Right. The accounting part.

21 MS. SHAY: Your Honor, I wasn't aware that  
22 our petition for accounting was set for today. We never  
23 did receive --

24 THE COURT: No. Your objection, I think --  
25 the objections to his accounting are set for today, then

1 pleadings for a partition, right?

2 MS. SHAY: Yes, Your Honor.

3 THE COURT: Are you abandon -- do have a  
4 petition for a -- you have a pleading for a partition?

5 MR. ZACHARY: No, Your Honor, I do not. My  
6 pleadings is strictly a motion for accounting -- or my  
7 Motion to Compel the accounting.

8 THE COURT: But, of course, Mr. Castro has a  
9 right to partition.

10 MR. CASTRO: Yes, Your Honor. Yes, Your  
11 Honor, sure do.

12 THE COURT: I don't quite understand why you  
13 say there is going to have to be a partition sometime, but  
14 not now. What does that mean?

15 MS. SHAY: Well, Your Honor, we still have to  
16 resolve the accounting issues. And I don't think that we  
17 can even think about partition until those issues are  
18 resolved. I mean, basically, the estate will be  
19 distributed upon closure of the administration and that  
20 has not happened. We just feel that there are a lot of  
21 conditions precedent that have to occur first.

22 MR. STANTON: Judge, may I speak just  
23 briefly?

24 THE COURT: Yes, sir, you may.

25 MR. STANTON: This estate has been going on

1 since July or August of 1998.

2 THE COURT: Right.

3 MR. STANTON: And we have received -- we've  
4 received --

5 THE COURT: July of '98.

6 MR. STANTON: -- an enormous number of  
7 lawsuits, petitions, motions. At some time, it's got to  
8 stop.

9 THE COURT: That's true.

10 MR. STANTON: Or there's not going to be  
11 anything left to divide or partition.

12 THE COURT: I agree.

13 MR. STANTON: And we think -- and we thought  
14 a year ago this past June that this estate ought to be  
15 partitioned as a first step toward resolution. And that's  
16 what we asked for then, that's what we ask for now, that's  
17 what is on the hearing docket today as I understand it;  
18 petition for accounting and distribution and partition, if  
19 necessary.

20 And all you have to do, as I understand it,  
21 in order to get that in motion, is simply appoint three  
22 commissioners to tell you, to report back to you and say,  
23 "This can be divided in kind and we recommend this  
24 division," or "It cannot be divided in kind. It must be  
25 sold and the proceeds distributed."



1 Now, as far as I'm concerned, I don't know  
2 what there is to a partition hearing besides that.

3 THE COURT: Well, that's -- I think that's  
4 basically it. I think our primary -- one of our primary  
5 things here, from your pleadings, was to handle the  
6 objections to the accounting; isn't that right?

7 MR. ZACHARY: Yes. That's what I think we're  
8 here today to do, Judge, is on the accounting.

9 THE COURT: Yes. But I'm going to appoint  
10 some commissioners, either at this hearing or probably at  
11 the next hearing, but I would like the attorneys to submit  
12 some names that you think would be appropriate for  
13 commissioners in this case.

14 MR. ZACHARY: And that would be fine, Judge.  
15 One thing I want to make real clear on the record to  
16 Mr. Denison's attorney, to John Wayne Denison's attorney,  
17 is you've got to distribute before you can partition.  
18 You've got to distribute to that trust. Nothing has been  
19 distributed to the trust yet.

20 MR. LEGGETT: And we concur with that, Your  
21 Honor. While the estate has been going on from 1997,  
22 1998, as indicated by Mr. Stanton and Mr. Castro, the fact  
23 of the matter is there's not been a dime of money put into  
24 this trust and Bob Marshall Denison is supposed to have  
25 income from the trust and it's quite clear from the first

1 page of the will that that trust should have been set up  
2 and funded and accounted for.

3 And if there are commissioners appointed, one  
4 of the things you should charge them with is determining  
5 how much money, property, whatever should be in that trust  
6 and/or how much income should have been generated from the  
7 trust from the inception of the estate.

8 MR. CASTRO: Your Honor, one of the things  
9 that has to be made clear that I'm not sure that everybody  
10 understands is that the trust or the property half of  
11 the trust -- half of the property that is to be in the  
12 trust is just as responsible for the administration of  
13 expenses of this estate as the other half. One half can't  
14 be charged with administration expenses and other half be  
15 free of it.

16 THE COURT: I understand.

17 MR. CASTRO: We have been in administration  
18 almost five years now. The reason we have is because of  
19 the lawsuits that have been filed. And so as long as  
20 we're in administration, as long as our expenses to pay  
21 and as long as we have our hands tied with regard to being  
22 able to dispose of property in order to pay for debts of  
23 the estate, then we can't move forward and that's what we  
24 want to do today. We want to move forward towards some  
25 sort of resolution.

1 Now, with regard to the accounting, if they  
2 have some objections now about the accounting now that  
3 they have -- you know, maybe we should take a short recess  
4 and let them look over that and see if they have some  
5 problems.

6 THE COURT: That's what I wanted to take up.  
7 I think you had some specific objections at one time.

8 MR. ZACHARY: Yes.

9 THE COURT: And yours were general  
10 objections, I believe.

11 MS. SHAY: Yes, Your Honor. And basically, I  
12 would have to go through -- now I have had an opportunity  
13 to look at the thick information --

14 THE COURT: All right.

15 MS. SHAY: -- but I would like an opportunity  
16 to go through the pleading that was filed this morning or  
17 handed to me this morning.

18 THE COURT: Well, I think that's a good idea.  
19 We'll take a recess and then we'll take up the objections  
20 to the accounting and we'll take up also your motion for  
21 clarification of your appointment.

22 MR. ZACHARY: Yes.

23 THE COURT: But we'll take up y'all's  
24 objections to the accounting and your objection to the  
25 accounting. Now, also, I want to get your nominations for

1 commissioners today. I don't know if I'll appoint them  
2 today or the next hearing. Then I have before me today  
3 the Motion to Lift the Temporary Injunction and a motion  
4 for what, a three-million-dollar bond?

5 MS. SHAY: Yes, Your Honor.

6 THE COURT: Have you seen -- have you seen  
7 that motion for a three-million-dollar bond?

8 MR. CASTRO: I haven't even read it all, Your  
9 Honor. I just --

10 THE COURT: I understand. We'll take that up  
11 today. So the first thing we'll take up is any objections  
12 to the accounting and then your clarification motion.

13 MR. ZACHARY: Okay.

14 THE COURT: So let's take a 15-minute recess.

15 MR. ZACHARY: Thank you, Your Honor.

16 (Recess from 1:43 p.m. to 2:00 p.m.)

17 THE COURT: Okay. The Court will come to  
18 order, please. We will now take up any objections to the  
19 accounting. You want to go first or do you -- why don't  
20 you go first since you have specific objections to the  
21 accounting.

22 MR. ZACHARY: Okay.

23 THE COURT: First, I noticed you object  
24 because the accounting is not sworn to as required by  
25 statute. Is that --

1 MR. ZACHARY: Yes..

2 THE COURT: It's not sworn to?

3 MR. CASTRO: It is now, Your Honor. It is  
4 now.

5 MR. ZACHARY: Yes. Your Honor, I believe,  
6 it was in -- and Isaac, you may recall the date. Isaac  
7 delivered to my office several weeks ago this -- it's  
8 called "Ida Denison's Estate General Ledger". It's got a  
9 transaction detail from July 26th of 1997 till March 31st  
10 of 2001. And this is what I received in the mail, or  
11 actually by hand delivery, subsequent to that original  
12 motion that I filed. In fact, it was the next day, I  
13 believe.

14 THE COURT: Yes.

15 MR. ZACHARY: And that is what I -- or this  
16 document is what I have filed my -- the supplement on and  
17 made the objections to, was this document here. Today, as  
18 I came in the courtroom, I was handed this document called  
19 accounting and I believe that it attempts to address the  
20 issues that I raised in that first supplement. One of  
21 which is the fact that it -- of it not being sworn to.  
22 Now -- I'm sorry.

23 THE COURT: No. That's all right. I was  
24 just -- you still object to the fact it wasn't sworn to?

25 MR. ZACHARY: Your Honor, I have not seen the

1 document that he's filed. I assume if that's it and  
2 Exhibit A is this document, then that would satisfy my  
3 objection.

4 THE COURT: Well, I'm going to -- I'm not  
5 going to allow you to be satisfied. There's several  
6 problems with the certification which the Court finds it's  
7 not properly certified to. The first place, it's  
8 attempted to be certified to on Sunday. And the second  
9 place, it's notarized by his attorney of record, which is  
10 not proper.

11 As I understand it, you, Mr. Castro, you took  
12 the jurat yourself?

13 MR. CASTRO: Yes, Your Honor, I did.

14 THE COURT: That's not proper. And it's  
15 sworn to on a Sunday. That's not proper. The accounting  
16 is not admitted since it's not sworn to by a notary public  
17 that's not interested in the case. It's not proper for a  
18 member of the firm to take the jurat. Don't you agree?

19 MR. ZACHARY: I agree, Your Honor.

20 THE COURT: You want to inspect it? Don't  
21 you agree?

22 MR. CASTRO: No, Your Honor, I don't. I  
23 don't see anything in the rule that says that.

24 THE COURT: Well, that's the rule in all  
25 cases. The lawyer can't be the one that takes the jurat.

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.

1 You know, we are going to have to live or die with this  
2 accounting when we go through the removal question and if  
3 this is what he says is the accounting, he's the one that  
4 has to live or die by it.

5 MS. SHAY: That's correct, Your Honor.

6 THE COURT: Any other -- I don't think that's  
7 the correct objection to the accounting part. We may not  
8 agree with it, but that's -- the question is whether he's  
9 complied with the rules of accounting. Any other  
10 objection to the accounting?

11 MR. LEGGETT: Your Honor, Jessica Denison  
12 does have one as well.

13 THE COURT: All right. Have you finished  
14 with yours?

15 MS. SHAY: Yes, Your Honor.

16 THE COURT: All right. Proceed.

17 MR. LEGGETT: Jessica Denison objects to the  
18 accounting because, as Mr. Zachary has indicated, that we  
19 do not have any indication of the property that's come  
20 into the hands of the independent executor since March the  
21 31st of 2001. We don't have anything that's been produced  
22 in court here today as of this hearing to indicate to you  
23 the income or the expenses of the estate over the course  
24 of the last year, since March the 31st, 2001, and we  
25 believe that the probate code requires them to produce

1 something.

2 THE COURT: Well, he says that, as I  
3 understand it, no property has come in your possession  
4 since you filed the amended inventory.

5 MR. CASTRO: The only thing I can say, Your  
6 Honor, is that there has been oil royalty income, yes.  
7 And so the only income that the estate has is oil  
8 royalties and also the sale of cattle.

9 THE COURT: Well, you've got to state the  
10 property that has come into his possession since the last  
11 amended inventory. That has to be stated according to the  
12 rule.

13 MR. LEGGETT: Your Honor, and it's -- those  
14 are or could potentially be, if this journal that he has  
15 produced is any indication of the property of the  
16 estate -- just oil royalties or just the sale of cattle  
17 could be pretty substantial because there were several  
18 hundred head of cattle and you know --

19 THE COURT: Wait a second. I'm not concerned  
20 whether it's ten cents or ten million --

21 MR. LEGGETT: Correct.

22 THE COURT: -- the law says that if it's come  
23 into your possession since he filed the amended inventory,  
24 it's got to be listed.

25 MR. LEGGETT: Correct. And he has indicated,

1 the Court hear this."

2 So how much -- what time are you thinking  
3 about?

4 MS. SHAY: Well, Your Honor, we were hoping  
5 since everybody was going to be here anyway that we could  
6 have this set for the 21st. I believe that's when the --

7 THE COURT: I should think that would be  
8 enough notice. Any objection to that, why we couldn't set  
9 it on the 21st?

10 MR. CASTRO: Your Honor, I don't think that's  
11 enough notice, in spite of the fact that I have to have a  
12 supplemental accounting done by that time, otherwise I  
13 face a five-hundred-dollar-a-day fine for the estate. So  
14 I'm not going to be able to do much of anything else  
15 during that time.

16 THE COURT: Well, let me -- what do you say?

17 MS. SHAY: Well, Your Honor, we just feel  
18 that there's a sense of urgency with regard to this or we  
19 wouldn't have requested or filed the motion to begin with.

20 THE COURT: Yeah.

21 MS. SHAY: So we would just urge that we hear  
22 it as soon as possible.

23 THE COURT: I don't see any urgency. I don't  
24 see any need for a bond offhand, but I'll hear the motion.  
25 The thing is, he is -- the testatrix appointed him

1 independent executor. So you know, we're stuck with that.  
2 That was her will. That was her desire.

3 The other thing is, I assume there's more  
4 land than there is personal property. So in the end, your  
5 client is protected, except I sure don't think the  
6 independent executor ought to be allowed to dispose of any  
7 land or hypothecate a mortgage to any land. Now, if is he  
8 going to dispose of any land or mortgage any land, then I  
9 am going to look favorably on a bond, but the simple thing  
10 would be to let the land protect your client and your  
11 client not try to mortgage the land.

12 You're wanting to sell some of the land in  
13 one of your motions?

14 MR. CASTRO: Yes, Your Honor. Yes. In order  
15 to pay the debts of the estate, there is going to have to  
16 be some property sold. There's no getting around that.  
17 It is going to have to be sold.

18 THE COURT: Before the partition? You want  
19 it sold before the partition?

20 MR. CASTRO: Well, it can be sold in  
21 conjunction with the partition, Your Honor. We have  
22 designated certain property that --

23 MS. SHAY: Your Honor --

24 MR. CASTRO: -- that ought to be sold --

25 THE COURT: Wait just a minute.

1 MR. CASTRO: -- that ought to be sold in  
2 order to pay the debts, as we have stated, are still due  
3 in our accounting. And so those debts are going to have  
4 to be paid. One way or another, they have to be paid.  
5 And there's not enough liquidity of the estate. There  
6 never has -- there never was, even when the Denisons were  
7 alive -- Mr. and Mrs. Denison were alive.

8 THE COURT: Well, when she died, was the land  
9 free and clear?

10 MR. CASTRO: No, Your Honor.

11 THE COURT: It wasn't free and clear?

12 MR. CASTRO: No.

13 MS. SHAY: Your Honor, only two sections of  
14 the property were encumbered at that point and the  
15 defendant has encumbered almost the entire estate at this  
16 point.

17 THE COURT: Well, that shouldn't have  
18 happened.

19 MS. SHAY: No, Your Honor.

20 MR. CASTRO: Well, that's -- you know, that's  
21 a whole other issue that we can spend a long time on.

22 THE COURT: Well, no. I'm just saying if the  
23 land is unencumbered, that protects her. If the land has  
24 been encumbered, then she may have some merit here on this  
25 motion. So you don't think you could be ready on the

1 21st?

2 MR. CASTRO: No, Your Honor. I think that --  
3 you know, this is an entirely new lawsuit and they need to  
4 follow the rules with regard to the lawsuit and serve --

5 THE COURT: What do you mean an entirely new  
6 lawsuit?

7 MR. CASTRO: Well, that's --

8 MS. SHAY: Your Honor, it's not an entirely  
9 new lawsuit.

10 MR. CASTRO: The executor is entitled to be  
11 served with citation and time to answer.

12 THE COURT: Oh, no. I can't see that, but I  
13 think you can be entitled to at least ten days.

14 What's the ad litem's position on this  
15 three-million-dollar bond?

16 MR. ZACHARY: Your Honor, I'm ready to  
17 proceed on the motion just whenever the Court is --  
18 whenever the Court finds time. I mean, I'm ready.

19 THE COURT: Well -- yes, sir.

20 MR. LEGGETT: The property of the estate has  
21 been encumbered since the estate -- it was created since  
22 Mrs. Denison died. A substantial portion of the estate  
23 has been --

24 THE COURT: Has been encumbered?

25 MR. LEGGETT: Yes, sir.

1 THE COURT: With consent of all the parties?

2 MR. LEGGETT: No, sir.

3 MR. CASTRO: But it's nothing new, Your  
4 Honor.

5 THE COURT: All right. Okay. This motion  
6 then for the requirement of the bond is going to be set  
7 down for the May the 21st hearing. We may go over into  
8 the 22nd, so you'll want to adjust your schedules, but  
9 that's a matter of some urgency. So it will be heard on  
10 the 21st. If it doesn't -- if we don't reach it on the  
11 21st, we'll go on the 22nd.

12 MR. CASTRO: Will you note our objection,  
13 Your Honor?

14 THE COURT: Your objection is noted, but the  
15 Court finds that that amount of time, considering the  
16 length the estate has been pending, that that is  
17 sufficient time for you to consider her motion that he  
18 post a bond.

19 Let's see. Then the next is we have a Motion  
20 to Lift the Temporary Injunction. Everybody have a copy  
21 of the motion? You have that?

22 MS. SHAY: Yes, Your Honor. We were provided  
23 a copy of that this morning. And I would just object to  
24 the Court's considering that motion at this particular  
25 time as we've not been provided adequate notice.



1 for the partition, wasn't it? How can we consider that  
2 without the commissioners' report?

3 MR. CASTRO: You can. That's the first step,  
4 Your Honor, to appoint the commissioner, if you want to  
5 address that.

6 MR. STANTON: I'd just like to say, I don't  
7 understand what there's to be heard on the Motion for  
8 Partition except that you appoint the commissioners to see  
9 if it can or can't be divided in kind. If it can't be,  
10 report back to you and partition to have it sold and  
11 partition the money. I mean, you and I have been through  
12 these partition suits before.

13 THE COURT: Yeah. And from what I know about  
14 it, I'm not going to make a finding that it can't be  
15 partitioned in kind.

16 MR. STANTON: Well, I'm just saying those are  
17 your options.

18 THE COURT: Yeah, but I've got to have  
19 commissioners.

20 MR. STANTON: Well, of course, you do, but  
21 why can't those be appointed the next day -- today or  
22 tomorrow? We've got --

23 THE COURT: Well, we're going to hear these  
24 two motions on the bond and on the temporary injunction  
25 and I'm going to appoint the commissioners on the 21st.

1 MR. STANTON: Okay.

2 THE COURT: Because I want everybody, before  
3 they leave, to give me the names of the one they want me  
4 to appoint, and then I'll have to do some checking and see  
5 who I can appoint.

6 MR. STANTON: I have one question. I don't  
7 have my rule book today and I apologize.

8 THE COURT: All right. You can borrow mine.

9 MR. STANTON: My question is -- well, I'll do  
10 that if you don't mind. My question is this, and maybe  
11 somebody else knows the answer to it. Can you appoint a  
12 commissioner who is not a resident of Stonewall County?

13 THE COURT: Well, I don't think so. Let's  
14 see. That's -- what is it, three -- you said three what?

15 MR. CASTRO: 373, Your Honor, beginning --  
16 it's actually Rule 3 -- Section 380(a), the appointment of  
17 commissioners.

18 THE COURT: Three -- report of commissioners,  
19 partition by commissioners. Appointment of commissioners,  
20 380. I thought they had to be residents of the county.  
21 Let's see.

22 MR. STANTON: Well, I thought they did, too,  
23 but I haven't read it as specified of a probate matter.

24 THE COURT: Well, I don't see it in the  
25 statute anymore, but I was going to appoint three

1 MR. STANTON: Mr. Leggett?

2 THE COURT: What do you say?

3 MR. STANTON: I'm just asking --

4 THE COURT: Yeah. Well, do you have some  
5 thoughts on that?

6 MR. LEGGETT: I believe they have to be  
7 residents of the county, personally.

8 THE COURT: Seemed like that used to be rule,  
9 doesn't it?

10 MR. STANTON: Seemed like it was.

11 MR. LEGGETT: The only ones that I've been  
12 involved with, Your Honor, the partitioners -- the  
13 commissioners were residents of the county of the  
14 property. And I think all of this property is contained  
15 in one county.

16 Has the Williamson County property been sold?

17 MS. SHAY: That's been sold.

18 MR. LEGGETT: Okay. So all the property at  
19 the current time is part of Stonewall County.

20 THE COURT: Is that right, Mr. Castro? Is it  
21 all in Stonewall County?

22 MR. CASTRO: Yes, sir. No, there is one lot  
23 in Haskell County, actually.

24 THE COURT: One lot?

25 MR. CASTRO: Yes. Yes. Your Honor, the

1 THE COURT: You find the annotations on 380?

2 MR. CASTRO: It's right here, Your Honor.

3 THE COURT: See if there's anything on the  
4 residence.

5 MR. CASTRO: I actually don't see anything on  
6 the residence.

7 THE COURT: How about is there anything under  
8 it?

9 MR. CASTRO: There isn't anything on the  
10 list. Not many cases.

11 THE COURT: Well, that sure seems like that  
12 was the old rule. I don't know where we got it.

13 All right. I am going to appoint three  
14 commissioners from Stonewall County. I'm not sure it's  
15 required, but that's what I am going to do. And I don't  
16 like to because we're going to have enough trouble getting  
17 a jury as it is.

18 Now, I will entertain everybody's nomination  
19 for commissioners and then I will appoint them on the  
20 21st. On the 21st, we are going to consider lifting the  
21 temporary injunction, we are going to consider the motion  
22 for a bond on a temporary executor -- independent  
23 executor.

24 Now, I agree we do have a problem. I don't  
25 see how we are going to have a partition hearing on the

1 21st, do you? I can't partition it without a -- just out  
2 of the clear blue sky, can I?

3 MR. CASTRO: Well, the appointment of the  
4 commissioners is the first step, Your Honor.

5 THE COURT: Yes. So we'll do that on the  
6 21st.

7 MR. ZACHARY: I'm sorry. I didn't mean to  
8 interrupt you. If I could, I think -- I mean, I think  
9 there's more to it than just appointing commissioners in a  
10 case like this, and I'll direct you to Section 377 of the  
11 probate code where it talks about -- at the hearing upon  
12 an application for partition, there's several things that  
13 the Court has got to determine.

14 Now, if Isaac and I were co-tenants on a  
15 piece of property and we owned it, yeah, either party  
16 could come in and ask for a partition and the Court would  
17 appoint three commissioners and go on down the road.

18 But the Court has got to determine -- I  
19 think, because of the State's involvement in this case,  
20 the Court has got to determine basically what part of the  
21 estate is subject to being partitioned. Because as Isaac  
22 has mentioned, there are debts and expenses of this estate  
23 that haven't been paid. That's what the accounting  
24 reflects.

25 So there are several things that we've got to

1 determine before we can appoint the commissioners because  
2 even when we do appoint the commissioners, the question is  
3 going to be, well, what are they going to go out and  
4 partition? So 377, I think, specifically gives a  
5 mechanism for making those determinations. So I think a  
6 hearing would be required.

7 THE COURT: Yeah. We're going to have the  
8 hearing on the 21st. I think that's a good point. We'll  
9 have to follow 377 on that hearing.

10 MR. CASTRO: I certainly agree with that,  
11 Your Honor.

12 THE COURT: Yeah.

13 MR. CASTRO: There are some things we need to  
14 know -- yes, what property needs to be sold to pay debts,  
15 so therefore, what is left to divide out for the  
16 commissioners to split.

17 THE COURT: Right. Yeah. Good point there.  
18 Yeah.

19 MR. ZACHARY: Okay.

20 THE COURT: So we'll --

21 MR. STANTON: Well, let me ask this question.  
22 Should you go ahead, though, and at least entertain the  
23 names of suggested commissioners today?

24 THE COURT: Yeah. I'm going to take the  
25 names before everybody leaves.

1 MR. STANTON: Yeah.

2 THE COURT: And as I say, we are going to  
3 hear these two motions on the 21st and we are going to go  
4 through this ritual of 377 on the 21st and appoint  
5 commissioners on the 21st. And what else do we want to do  
6 on that day? What else?

7 MS. SHAY: Your Honor, I can't think of  
8 anything else.

9 THE COURT: Could you have your proposed jury  
10 charge?

11 MS. SHAY: Yes, Your Honor, I'll try to have  
12 it by then.

13 THE COURT: By the 21st? Okay. So we can  
14 give a copy to -- and if you have -- you don't have any  
15 affirmative pleadings on the jury, do you, Mr. Castro? Or  
16 do you have any?

17 MR. ZACHARY: No, I don't, Your Honor.

18 MR. CASTRO: Yes. I'm going to have some,  
19 Your Honor.

20 THE COURT: Well, if you are going to have  
21 some -- well, you have to have pleadings before you can  
22 have them. What are your pleadings on your affirmative  
23 issues?

24 MR. CASTRO: Well, just off the top of my  
25 head, Your Honor, I couldn't --

1 THE COURT: Well, if you are going to have  
2 any jury issues, let's have your proposed charge on the  
3 21st.

4 MR. CASTRO: Yes, sir.

5 THE COURT: All right. So we can -- I want  
6 to be sure and get this to the jury on the 21st. I mean,  
7 on the --

8 MR. LEGGETT: In June?

9 THE COURT: When is it we are going to do  
10 this?

11 MR. STANTON: June 17th, Judge.

12 MR. CASTRO: June 17th.

13 THE COURT: June 17th, yeah. It will  
14 probably take all week. I guess I better pull a jury of  
15 what, 250 people?

16 MR. STANTON: You said 200 last time in your  
17 record, but it's up to you.

18 THE COURT: Did I say 200 last time?

19 MR. STANTON: Yes, sir, in your record you  
20 did. I wasn't here, but that's what the record says.

21 THE COURT: All right. That sounds all  
22 right, doesn't it?

23 MS. SHAY: Yes, sir.

24 THE COURT: But if you'll have the charge, it  
25 will help some on the 21st.



1 having -- funding the trust before we partition? You want  
2 to do that next time?

3 MR. ZACHARY: Yes, I will. I'll look and see  
4 what I can find, Your Honor.

5 THE COURT: I don't quite understand how you  
6 can do that, but -- it looks like to me you've got to  
7 partition before you can fund the trust.

8 MR. ZACHARY: I think it's just really  
9 following the terms of the will. The will says an  
10 undivided one-half to the trust and an undivided one-half  
11 to John Wayne Denison. I think you've got to do that. I  
12 mean, I just don't think it can be partitioned until that  
13 act is accomplished.

14 THE COURT: Well, I -- that bothers me a  
15 little bit. How do you -- how do you partition the will  
16 when it says -- how do you partition the property when the  
17 will says an undivided one-half?

18 MR. ZACHARY: Well, once the executor funds  
19 the trust, and then you've got a trust that's holding  
20 property and then you've got John Wayne Denison holding  
21 property, then, I mean, then you've got a co-tenancy  
22 situation. You've got co-tenants where either party then  
23 under our co-tenancy law could request a partition, but  
24 until then -- I mean, my view at this point is it's  
25 immature.