

Padre Island land dispute goes to trial Mineral rights at heart of fight over 1938 sale

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PUBLICATION: San Antonio Express-News

SECTION: A Section

DATE: June 1, 2000

EDITION: Metro

Page: 1A

Descendants of the early owners of Padre Island gathered this week for a lawsuit that will determine whether they were swindled out of riches - or merely are making an opportunistic grab at an elderly man's ample fortunes.

Gilbert Kerlin, a 90-year-old retired lawyer who also prospered in oil leasing, took the stand on the opening day of the civil suit filed by hundreds of members of the Balli family. Kerlin defended his decision not to give heirs a share of mineral royalties after his 1938 purchase of the island.

Kerlin, who maintains the Ballis didn't own Padre when they sold it, was challenged Wednesday by the family's lawyers, who presented evidence that he used the Balli deeds to prove chain of title in several legal challenges after the 1938 sale.

Rene Flores, a Balli who began researching the case with his grandmother when he was 12, concluded the day by saying he felt vindicated.

"When that man, Kerlin, was caught in the crosshairs ... I know my grandmother was resting in peace," he said with relish.

The legal battle of the Ballis, who once owned land in seven South Texas counties and parts of Mexico, has spurred several lawsuits, including one, which may go to trial soon, against the John G. and Marie Stella Kenedy Memorial Foundation, which owns the Kenedy Ranch.

While that trial has swelled to include about 800 plaintiffs, Kerlin and his corporate interests have been sued by about 300 Balli family members. The trial has become a litmus test for the changing power structure of a region once dominated by white settlers.

Throngs of Balli family members began converging on Brownsville on Tuesday, when jury selection began, from as far as Mexico and Michigan, California and Florida, creating such a distraction that visiting District Judge Pat McDowell issued a gag order on all participants.

McDowell said he doesn't want news reports to prejudice the 14-member jury, which the court bailiff said was predominantly, if not wholly, Hispanic.

Still, several Ballis expressed their optimism after the first day of testimony.

"What the defense lawyers said to begin with is being disproved right now," said A.C. Balli, who attended the trial with his sister.

"They were saying these (Balli) titles were no good, these deeds were no good," he said. "But the man (Kerlin) who used them all along never told the lawyers and judges they were no good."

A woman who identified herself as A.C. Balli's sister and opted not to give her first name said the family merely wants to end the lawsuit, which was filed in 1993 but has roots going back to the 1930s. She said she hopes the end will be a just one.

"We've been passing this from generation to generation, this hurt, this wound in us," she said.

What has become a decades-long saga started as an innocent transaction. In 1938, Kerlin, a young Harvard-educated lawyer from New York, arrived in South Texas with instructions from his uncle, Frederic Gilbert, to buy the barren stretch of sand that has since become a popular Texas beach resort.

At the time, descendants of Padre Jose Nicolas Balli held 12 deeds for the island. Jose Nicolas Balli had owned the land since 1765, when he confirmed a land grant to his ancestors from the Spanish Empire, Balli family members said.

Kerlin rounded up the Ballis and purchased the deeds to 61,000 acres and Laguna Madre, the strip of water between the island and the mainland, for what the Ballis claim was a nominal fee. Kerlin's lawyers hinted Wednesday that he paid at least \$80,000 for the deeds.

A condition of the sale was Kerlin's agreement to pay the heirs a portion of any profits from minerals extracted from the island and lagoon, which they say he has never done.

The Balli family's lawsuit seeks more than \$11 million in gas, oil and land profits, interest payments and legal fees.

Their lawyers, in an opening statement, painted Kerlin as a sharp young lawyer out to help his uncle finagle the "less intelligent and smart" Balli family out of their oil-rich land.

"This is a case about a broken promise and fraud," lawyer Britt Monts said Wednesday. "It's not enough after all this time and after all these heartbreaks to just ask him (Kerlin) to do what he should have done years ago."

But Kerlin claims he is the one being exploited as Ballis come out of the woodwork to claim a chunk of his hard-earned fortune. His lawyers allege that the Ballis didn't own Padre Island when they transferred the deeds to Kerlin, having sold it to a man named Santiago Morales in 1830.

Though documents later turned up in a court in Matamoros, Mexico, showing that Morales sold it right back to the Ballis the same year, Kerlin's lawyers question the validity of those documents, which were never filed for record in the state of Texas.

They also claim the Balli family abandoned its ranch on Padre Island in the 19th century, failing to pay property taxes.

"Did you ever hear them say they were going to prove their title was good?" lawyer Horacio Barrera asked jurors. "They're not going to tell you their deed was good, but they still want the (royalties)."

While Kerlin may be the only surviving witness to the land transactions for the defense, lawyers for the plaintiffs said they will be putting on the stand "a few" of the Ballis whose names were on the original deeds.

Some Ballis have already settled with Kerlin, choosing to avoid a trial, lawyer Roel Esquivel said. He would not disclose the settlement amount worked out last week.

Other Ballis said they are hunkering down for a long, drawn-out trial.

"All I know is it's going to be a long, long trial," said Tina Lopez, who traveled from El Paso with her mother, Emma Balli. Lopez is a plaintiff in lieu of her deceased father. "I'm going to just keep coming here to support my dad."

Several Ballis hinted the trial's outcome may forever change the way history has been perceived in South Texas. Their lawyers alluded to as much in their opening statements.

"I think you're going to be writing a chapter in the history of South Texas," Monts told jurors. "It's a chapter that's never been written before ... the final chapter, the end of the story."

<HR><I>The Associated Press contributed to this report.