

Protective Order Statement

No protective order under Title 4 of the Texas Family Code is in effect, and no application for a protective order is pending with regard to the parties to this suit.

Dates of Marriage and Separation

The parties were married on or about April 22, 1989 and have ceased to live together as husband and wife.

Grounds for Divorce

The marriage has become insupportable because of discord or conflict of personalities between Petitioner and Respondent that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

Respondent is guilty of cruel treatment toward Petitioner of a nature that renders further living together insupportable.

Children of the Marriage

Petitioner and Respondent are parents of the following children of this marriage who are not under the continuing jurisdiction of any other court:

Name: Kyla Rae Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: January 26, 1992
Present address: 110 W. Hackberry St., Fredericksburg, Texas

Name: Emily Laine Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: July 15, 1993
Present address: 110 W. Hackberry St., Fredericksburg, Texas

Name: Loren Noel Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: December 20, 1994
Present address: 110 W. Hackberry St., Fredericksburg, Texas

Name: Dana True Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: March 22, 1996
Present address: 110 W. Hackberry St., Fredericksburg, Texas

There are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships affecting the children the subject of this suit.

Information required by section 152.09 of the Texas Family Code is provided in the attached affidavit.

No property of consequence is owned or possessed by the children the subject of this suit.

Petitioner believes that Petitioner and Respondent will enter into a written agreement containing provisions for conservatorship and support of the children. If such an agreement is not made, Petitioner requests the Court to make orders for conservatorship and support of the children.

The appointment of Petitioner and Respondent as joint managing conservators would not be in the best interest of the children. Petitioner, on final hearing, should be appointed sole managing conservator, with all the rights and duties of a parent sole managing conservator, and Respondent should be ordered to make payments for the support of the children in the manner specified by the Court. Petitioner requests that the payments for the support of the children survive the death of Respondent and become the obligation of Respondent's estate.

Division of Community Property

Petitioner believes Petitioner and Respondent will enter into an agreement for the division of their estate. If such an agreement is made, Petitioner requests the Court to approve the agreement and divide their estate in a manner consistent with the agreement. If such an agreement is not made, Petitioner requests the Court to divide their estate in a manner that the Court deems just and right, as provided by law.

Petitioner should be awarded a disproportionate share of the parties' estate for the following reasons, including but not limited to:

- a. fault in the breakup of the marriage;
- b. fraud on the community;

- c. benefits the innocent spouse may have derived from the continuation of the marriage;
- d. disparity of earning power of the spouses and their ability to support themselves;
- e. the spouse to whom conservatorship of the children] is granted;
- f. needs of the children of the marriage;
- g. education and future employability of the spouses;
- h. tax consequences of the division of property;
- i. earning power, business opportunities, capacities, and abilities of the spouses;
- j. need for future support;
- k. nature of the property involved in the division;
- l. increase in value of separate property through community efforts by time, talent, labor, and effort;
- m. reimbursement;
- n. expected inheritance of a spouse;
- o. attorney's fees to be paid;
- p. the size and nature of the separate estates of the spouses;
- q. actual fraud committed by a spouse;
- r. constructive fraud committed by a spouse.

Reimbursement

Petitioner requests the Court to reimburse the community estate for funds or assets expended by the community estate to benefit or enhance Respondent's separate estate. The community estate has not been adequately compensated for or benefitted from the expenditure of those funds or assets, and a failure by the Court to allow reimbursement to the community estate will result in an unjust enrichment of Respondent's separate estate at the expense of the community estate.

Petitioner requests the Court to reimburse the community estate for the value of community time, talent, toil, and effort expended by Respondent to benefit or enhance Respondent's separate estate. The use by Respondent of community time, talent, toil, and effort was beyond what was reasonably necessary to maintain, manage, and preserve Respondent's separate estate, and for which the community estate was not adequately compensated. As a result, the failure to allow reimbursement to the community estate will result in the unjust enrichment of Respondent's separate estate.

Equitable Interest

Petitioner requests the Court to award to the community estate an equitable interest equal to the net amount of the enhancement in value of Respondent's separate property due to the financial contribution expended by the community estate to benefit or enhance that separate estate.

Petitioner requests the Court to award to the community estate an equitable interest in Respondent's separate property as a result of the use of community property to discharge all or part of a debt on separate property owned by Respondent.

Postdivorce Maintenance

Petitioner requests the Court to order that Petitioner be paid postdivorce maintenance for a reasonable period in accordance with chapter 8 of the Texas Family Code. Petitioner requests the Court to issue an order to garnish Respondent's wages for this maintenance.

Request for Mutual Temporary Restraining Order

Petitioner requests the Court to dispense with the issuance of a bond, and Petitioner requests that Petitioner and Respondent be temporarily restrained immediately, without hearing, and after notice and hearing be temporarily enjoined, pending the further order of this Court, from:

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

4. Causing bodily injury to the other party or to a child of either party.
5. Threatening the other party or a child of either party with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
7. Falsifying any writing or record relating to the property of either party.
8. Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
9. Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.
10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to Petitioner.
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.
12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.
13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.
14. Spending any sum of cash in Respondent's possession or subject to Respondent's control for any purpose, except as specifically authorized by order of this Court.
15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.

16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.
17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent or the parties' children.
19. Canceling, altering, or in any manner affecting the present level of coverage of any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' children.
20. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at either party's residence or in any manner attempting to withdraw any deposits for service in connection with those services.
21. Excluding the other party from the use and enjoyment of the other party's residence,
22. Opening or diverting mail addressed to the other party.
23. Signing or endorsing Petitioner's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to Petitioner without the personal signature of Petitioner.
24. Taking any action to terminate or limit credit or charge cards in the name of Petitioner.
25. Entering, operating, or exercising control over the motor vehicle in the possession of Petitioner.
26. Discontinuing or reducing the withholding for federal income taxes on Respondent's wages or salary while this case is pending.
27. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including cancelled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

28. Molesting or disturbing the peace of the children or of another party.
29. Removing the children beyond the jurisdiction of the Court, acting directly or in concert with others.
30. Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled.
31. Hiding or secreting the children from the other party or changing the children's current place of abode at 110 W. Hackberry St., Fredericksburg, Texas.

Petitioner requests that the parties be authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

To make withdrawals from accounts in financial institutions only for the purposes authorized by the Court's order.

To engage in acts reasonable and necessary to conduct the party's usual business and occupation.

Extraordinary Relief

As the basis for the extraordinary relief requested below, Petitioner would show that before the filing of this petition Respondent has engaged in the conduct set forth in the attached affidavit. Based on that affidavit, Petitioner requests the Court to grant the following relief:

Issue an order excluding Respondent from Respondent's residence at 110 W. Hackberry St., Fredericksburg, Texas.

Request for Temporary Orders and Injunction

Petitioner requests the Court, after notice and hearing, to dispense with the issuance of a bond, to make temporary orders and issue any appropriate temporary injunctions for the preservation of the property and protection of the parties and for the safety and welfare of the children of the marriage as deemed necessary and equitable. Petitioner requests that the Court enjoin Petitioner and Respondent from the following:

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.
4. Causing bodily injury to the other party or to a child of either party.
5. Threatening the other party or a child of either party with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
7. Falsifying any writing or record relating to the property of either party.
8. Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
9. Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.
10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.
12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.
13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.

14. Spending any sum of cash in the other party's possession or subject to the other party's control for any purpose, except as specifically authorized by order of this Court.
15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.
16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.
17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent or the parties' children.
19. Canceling, altering, failing to renew or pay premium, or in any manner affecting the present level of coverage of any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' children.
20. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at or in any manner attempting to withdraw any deposits for service in connection with those services.
21. Excluding the other party from the use and enjoyment of the other party's residence.
22. Opening or diverting mail addressed to the other party.
23. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.
24. Taking any action to terminate or limit credit or charge cards in the name of the other party.
25. Entering, operating, or exercising control over the motor vehicle in the possession of the other party.

26. Discontinuing or reducing the withholding for federal income taxes on the other party's wages or salary while this case is pending.
27. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including cancelled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.
28. Instituting any action in any other county, state, or nation attempting to obtain temporary or permanent orders concerning the marriage relationship of the parties, the dissolution of that relationship, spousal support, the conservatorship, custody, and support of the children of the parties, or any other order normally issued incident to a divorce proceeding or other proceeding involving the marital or parent-child] relationship.
29. Molesting or disturbing the peace of the children or of another party.
30. Removing the children beyond the jurisdiction of the Court, acting directly or in concert with others.
31. Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled.
32. Hiding or secreting the children from the other party or changing the children's current place of abode at 110 W. Hackberry St., Fredericksburg, Texas.

Request for Temporary Orders Concerning Use of Property

Petitioner requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders and issue any appropriate temporary injunctions respecting the temporary use of the parties' property as deemed necessary and equitable, including but not limited to the following:

Awarding Petitioner the exclusive use and possession of the parties' residence, furniture, and furnishings at 110 W. Hackberry St., Fredericksburg, Texas, while this case is pending, and enjoining Respondent from entering or remaining on the premises of the residence, except as authorized by order of this Court.

Awarding Petitioner exclusive use and control of the _____ motor vehicle and enjoining Respondent from entering, operating, or exercising control over it.

Request for Temporary Orders Regarding Children

Petitioner requests the Court, after notice and hearing, to dispense with the necessity of a bond and to make temporary orders and issue any appropriate temporary injunctions for the safety and welfare of the children of the marriage as deemed necessary and equitable, including but not limited to the following:

Appointing Petitioner temporary sole managing conservator.

Ordering Respondent to pay child support, health insurance premiums for coverage on the children, and the children's uninsured medical expenses while this case is pending.

Ordering the preparation of a social study into the circumstances and condition of the children and of the home of any person requesting managing conservatorship or possession of the children.

Ordering the psychological evaluation of the parties and the children.

Appointing a guardian and attorney ad litem to represent the interests of the children.

Ordering Respondent to produce copies of income tax returns for tax years 1989 through and including 1999, a current financial statement, and current pay stubs by a date certain.

Request for Interim Attorney's Fees and Temporary Support

Petitioner requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders and issue any appropriate temporary injunctions regarding attorney's fees and support as deemed necessary and equitable, including but not limited to the following:

Petitioner requests that Respondent be ordered to pay reasonable interim attorney's fees and expenses, including but not limited to fees for appraisals, accountants, actuaries, and so forth. Petitioner is not in control of sufficient community assets to pay attorney's fees and anticipated expenses.

Petitioner requests that Respondent be ordered to pay estimated income taxes on the due dates as required by the Internal Revenue Service and under the Social Security numbers of both Petitioner and Respondent and to pay any ad valorem taxes due on the properties of the parties.

Request for Temporary Orders for Discovery and Ancillary Relief

Petitioner requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders for discovery and ancillary relief as deemed necessary and equitable, including but not limited to the following:

Ordering Respondent to provide a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), form 7-1.

Ordering Respondent to produce copies of all the information necessary to prepare Petitioner's tax returns for tax year 2000, including tax returns and all supporting schedules for tax years 1989 through 1999, by a date certain.

Ordering the parties to participate in an alternative dispute resolution process before trial of this matter.

Ordering Respondent to execute all necessary releases required by Petitioner to obtain any discovery allowed by the Texas Rules of Civil Procedure.

Ordering a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.

Attorney's Fees and Expenses

It was necessary for Petitioner to secure the services of John Nichols and Pamela K. Bergman, licensed attorneys, to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the children, judgment for attorneys' fees and expenses through trial and appeal should be granted against Respondent and in favor of Petitioner for the use and benefit of Petitioner's attorneys; or, in the alternative, Petitioner requests that reasonable attorney's fees and expenses through trial and appeal be taxed as costs and be ordered paid directly to Petitioner's attorneys, who may enforce the order for fees in the attorneys' own name.

Statement on Alternative Dispute Resolution

Petitioner has signed a statement on alternative dispute resolution, which is attached as Exhibit 1.

Prayer

Petitioner prays that citation and notice issue as required by law and that the Court grant a divorce and all other relief requested in this petition.

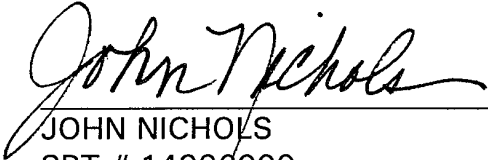
Petitioner prays that the Court immediately grant a temporary restraining order restraining the parties, in conformity with the allegations of this petition, from the acts set forth above, and Petitioner prays that, after notice and hearing, this temporary restraining order be made a temporary injunction.

Petitioner prays that the Court, in addition to the temporary restraining order and temporary injunction prayed for above, after notice and hearing, grant a temporary injunction enjoining Respondent, in conformity with the allegations of this petition, from the acts set forth above while this case is pending.


Petitioner prays for attorney's fees, expenses, and costs as requested above.

Petitioner prays for general relief.

LAW OFFICE OF JOHN NICHOLS



JOHN NICHOLS
SBT # 14996000



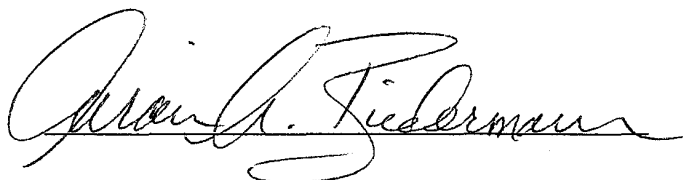
PAMELA K. BERGMAN
SBT #00795804
1301 MCKINNEY, SUITE 3636
HOUSTON, TEXAS
713/654-0708
713/654-0706 FAX

ATTORNEYS FOR AVIAN ANNE BIEDERMANN

ALTERNATIVE DISPUTE RESOLUTION CERTIFICATION

I am a party to this case. The following statement is intended to comply with the policy of the State of Texas pursuant to Chapter 154 of the Texas Civil Practice and Remedies Code and the provisions of Texas Family Code §§ 3.522 and 102.0085, effective September 1, 1995:

"I AM AWARE THAT IT IS THE POLICY OF THE STATE OF TEXAS TO PROMOTE THE AMICABLE AND NONJUDICIAL SETTLEMENT OF DISPUTES INVOLVING CHILDREN AND FAMILIES. I AM AWARE OF ALTERNATIVE DISPUTE RESOLUTION METHODS INCLUDING MEDIATION. WHILE I RECOGNIZE THAT ALTERNATIVE DISPUTE RESOLUTION IS AN ALTERNATIVE TO AND NOT A SUBSTITUTE FOR A TRIAL AND THAT THIS CASE MAY BE TRIED IF IT IS NOT SETTLED, I REPRESENT TO THE COURT THAT I WILL ATTEMPT IN GOOD FAITH TO RESOLVE CONTESTED ISSUES IN THIS CASE BY ALTERNATIVE DISPUTE RESOLUTION WITHOUT THE NECESSITY OF COURT INTERVENTION."



OFFICE OF THE CLERK
COUNTY OF DALLAS
TEXAS

VI 10:00 AM
LITED

No. 9284

IN THE MATTER OF §
THE MARRIAGE OF §
§
AVIAN ANN BIEDERMANN §
AND §
KENNETH KYLE BIEDERMANN §
§
AND IN THE INTERESTS OF §
KYL A RAE BIEDERMANN, §
EMILY LAINE BIEDERMANN, §
LOREN NOEL BIEDERMANN AND §
DANA TRUE BIEDERMANN, MINOR §
CHILDREN §

IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216^{JA} JUDICIAL DISTRICT

**TEMPORARY RESTRAINING ORDER
AND ORDER SETTING HEARING FOR TEMPORARY ORDERS**

The application of Petitioner for temporary restraining order was presented to the Court today.

The children the subject of this suit are Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann.

The Court examined the pleadings and affidavit of Petitioner and finds that Petitioner is entitled to a temporary restraining order.

IT IS THEREFORE ORDERED that the clerk of this Court issue a temporary restraining order restraining Petitioner and Respondent, and Petitioner and Respondent are immediately restrained, from:

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

FILED
At 12:36 O'clock A M

DEC 18 2000
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

4. Causing bodily injury to the other party or to a child of either party.
5. Threatening the other party or a child of either party with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
7. Falsifying any writing or record relating to the property of either party.
8. Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
9. Damaging or destroying the tangible property of one or both parties, including any document that represents or embodies anything of value.
10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.
12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.
13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.
14. Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by order of this Court.
15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.

16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.
17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent or the parties' children.
19. Canceling, altering, or in any manner affecting the present level of coverage of any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' children.
20. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at either party's residence or in any manner attempting to withdraw any deposits for service in connection with those services.
21. Excluding the other party from the use and enjoyment of the other party's residence.
22. Opening or diverting mail addressed to the other party.
23. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.
24. Taking any action to terminate or limit credit or charge cards in the name of the other party.
25. Entering, operating, or exercising control over the motor vehicle in the possession of the other party.
26. Discontinuing or reducing the withholding for federal income taxes on the other party's wages or salary while this case is pending.
27. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including cancelled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

28. Molesting or disturbing the peace of the children or of another party.
29. Removing the children beyond the jurisdiction of the Court, acting directly or in concert with others.
30. Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled.
31. Hiding or secreting the children from the other party or changing the children's current place of abode.

IT IS FURTHER ORDERED that the parties are authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

To engage in acts reasonable and necessary to conduct the party's usual business and occupation.

This restraining order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law. This order shall be binding on the parties; on the parties' agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

IT IS FURTHER ORDERED that the clerk shall issue notice to Respondent, Kenneth Kyle Biedermann, to appear, and Respondent is ORDERED to appear in person, before this Court in the courthouse at 101 West Main St., ^{Boerne}Fredericksburg, Texas, on Jan 2, 2000 at 9:00 A. M. The purpose of the hearing is to determine whether, while this case is pending: *subject to Jury Decret*

1. The preceding temporary restraining order should be made a temporary injunction pending final hearing.
2. The additional temporary injunction prayed for should be granted.
3. Petitioner should be awarded the exclusive use and possession of the parties'

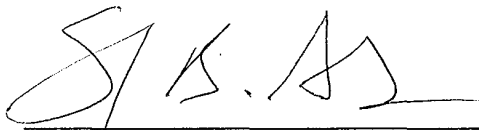
residence, furniture, and furnishings at 110 W. Hackberry St., Fredericksburg, Texas while this case is pending, and Respondent should be enjoined from entering or remaining on the premises of the residence, except as authorized by order of this Court.

4. Petitioner should be awarded exclusive use and control of the _____ motor vehicle, and Respondent should be enjoined from entering, operating, or exercising control over it.
5. Petitioner should be appointed sole managing conservator.
6. Respondent should be ordered to pay child support, health insurance premiums for coverage on the children, and the children's uninsured medical expenses while this case is pending.
7. The Court should order the preparation of a social study into the circumstances and condition of the children and of the home of any person requesting managing conservatorship or possession of the children.
8. Respondent should be appointed temporary possessory conservator.
9. The Court should order the psychological evaluation of the parties and the children.
10. The Court should appoint a guardian and attorney ad litem to represent the interests of the children.
9. The Court should order Respondent to produce copies of income tax returns for tax years 1989 - 1999, a current financial statement, and current pay stubs by a date certain.
10. The Court should order Respondent to pay reasonable interim attorney's fees and expenses.
11. The Court should order Respondent to pay estimated income taxes on the due dates as required by the Internal Revenue Service and under the Social Security numbers of both Petitioner and Respondent and to pay any ad valorem taxes as due on the properties of the parties.
12. The Court should order Respondent to provide a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the

form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), form 7-1.

13. The Court should order Respondent to produce copies of all the tax information necessary to prepare Petitioner's tax returns for tax year 1999, including tax returns and all supporting schedules for years 1992 - 1998, by a date certain.
14. The Court should order Respondent to participate in an alternative dispute resolution process before trial of this matter.
15. The Court should order Respondent to execute all necessary releases required by Petitioner to obtain any discovery allowed by the Texas Rules of Civil Procedure.
16. The Court should order a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.
17. The Court should make all other and further orders respecting the property and the parties that are pleaded for or that are deemed necessary and equitable and for the safety and welfare of the children.

SIGNED on Dec. 18, 2000 at 12:30 P.M.



JUDGE PRESIDING

Copy To: Atty. Bergman 12-18-00 *lem*

Certified Copy To: ✓ Petitioner

- ✓ Respondent/With Service papers
- 12-18-00 ✓ City Of Fbg. Police Dept. *lem*
- ✓ Gillespie County Sheriff's Office
- ✓ Cons.# One And Cons.# Two

CLERK OF DISTRICT COURT
GILLESPIE COUNTY TEXAS

VI 0.0000
LITEN

FILED
At 3:00 O'clock P M

No. 9284

DEC 18 2000

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By Jana Munoz, Deputy

GILLESPIE COUNTY, TEXAS

216th JUDICIAL DISTRICT

PETITIONER'S SUPPORTING AFFIDAVIT

Avian Ann Biedermann appeared in person before me today and stated under oath:

"My name is Avian Ann Biedermann. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am the Petitioner in this Original Petition for Divorce.

"I am presently married to Kenneth Kyle Biedermann ("Kyle") and I am the mother of Kyla Rae Biedermann (8 years old), Emily Laine Biedermann (7 years old), Loren Noel Biedermann (6 years old), and Dana True Biedermann (4 years old).

"On numerous occasions throughout our marriage Kyle has exhibited a violent temper, drastic mood swings and erratic behavior. Kyle has been physically, emotionally and verbally abusive towards me.

"Kyle has thrown objects at me and hit me with what I believe is his attempts to injure me.

"Thanksgiving Day this year, Kyle suddenly flew into a rage and threw a boot and hit me. I was apprehensive that he would do something else to hurt me in front of our children.

"Kyle has berated me on many occasions in front of our daughters and members of his family and my family, calling me "fucking stupid," "fucking bitch," "white trash," and other obscene and accusatory names. He has frequently screamed and yelled at me in public, shouting "you are so stupid" and "you make me sick," causing me to be completely humiliated and embarrassed.

"Kyle frequently tells our daughters that I am a jerk, that I do not care about them or do the things a mother should do. He constantly makes me the object of his jokes that are clearly meant to hurt me and alienate my children from me. He has told me that he does not love me, but that he does not want a divorce.

"Kyle's erratic and violent behavior against me has escalated in the last year and his behavior toward our children has become more abusive and disturbing. He has begun to show anger toward the children, yell at them and threaten to punish them while simultaneously teasing and playing with them.

"Kyle discusses adult topics with our children, particularly Kyla. Kyla has come to me very upset and frightened that we have no money and cannot pay bills or buy the things we need. I have told Kyle not to concern our children with financial matters, especially exaggerating the situation.

"My daughter, Kyla in conversation with me has described pregnancy, cesarean section procedures and has told me that her father discusses these things with her in relation to a friend's wife's pregnancy.

"Kyle has told our daughter, Kyla that I am ugly because I had my children by cesarean section and that he hopes Julie, his friend's wife does not have one.

"Kyla, who is 8 years old, has become obsessively concerned about her weight because of the criticism and derogatory comments she receives from her father.

"I am extremely concerned that my daughter, Kyla has been placed in some kind of 'surrogate wife' role and that she has suffered irreparable emotional damage. I am afraid that she will stop eating, or become anorexic and bulimic because of the pressure from her father.

"Kyle demonstrates inappropriate behavior when he plays with the children. I have observed him becoming aroused with an erection while he is playing with all four children.

"I am extremely concerned for my daughters' emotional and mental well being.

"Kyle is not concerned with our children's' physical well being. He will not let me take the children to a dentist although they all have excessive tooth decay and pain from abscesses. He tells me that it is not necessary, that we do not have the money to take them to the dentist and that their baby teeth will fall out anyway. My daughters exhibit embarrassment and pain because of their father's indifference to their needs.

"While playing at church, Kyla fell and hurt her wrist. Although she was experiencing excruciating pain, Kyle would not let me take her to the ER. I was distraught with worry knowing my daughter was hurt. One week later, she fell again, injuring the other wrist. Again, Kyle did not think she needed to see a doctor. He said that it was only sprained and that it was nothing. I pleaded with him to let me take her to the doctor and finally, after several days of watching my daughter wench in pain, arguing and pleading with Kyle and becoming an emotional wreck myself, I secretly took her to the doctor. X-rays showed both wrists to be broken. Kyle showed no concern or remorse at all for the physical and emotional damages that Kyla suffered.

"I believe that Kyle, with the help and participation of his family, is attempting to alienate my children from me.

"On several occasions they have gone away on family vacations of which I was not invited. While they are away, I have a very difficult time communicating with the children. I am not given adequate contact telephone numbers or addresses. When I am able to call, I am told that the children are not available, there is no answer at the number I am given or I am told not to call back.

" Kyle wants to take the children to Florida for a family vacation with his family during the present Christmas holidays and has told me that I am not invited to come with them. Kyle's family is wealthy and have a home in Florida. Kyle works with his father in a family business and I am never told about any of the business or personal plans concerning my husband or my family.

"I am very concerned and afraid that Kyle will keep the children in Florida away from me. When I attempt to talk to Kyle about this trip he says, "Let's just ask the children what they think about it." He continually involves our daughters in any disagreement or dispute that we have concerning issues relating to them. Although I have told him that I believe this involvement is damaging to their emotional health and well being and that we should shield them from those issues, he clearly takes pleasure in discussing everything with them making me appear to be the "bad guy."

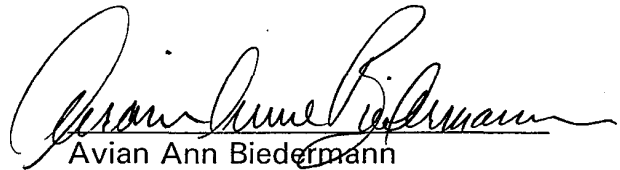
"My children are my life and every concern, and I am afraid that Kyle will carry out his threats, and take the children away from me. I believe that Kyle is capable of punishing me by alienating our daughters from me, even though this action would severely injure them.

"Because I love them with all my heart and I believe that Kyle's violent behavior will cause irreparable harm to all of us, I am requesting relief from this Court. Money will not compensate me if harm comes to me or to my children, or if my children are left without me. I do not have any other adequate remedy at law and in light of the above, there is a substantial likelihood that I will succeed on the merits of this action."

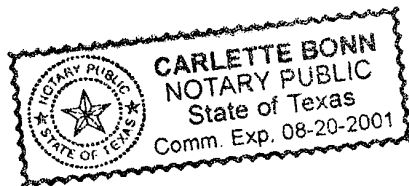
VERIFICATION

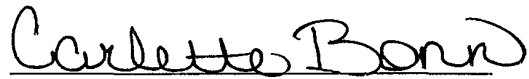
THE STATE OF TEXAS §
 Gillespie §
COUNTY OF ~~HARRIS~~ §

BEFORE ME, the undersigned NOTARY PUBLIC, personally appeared Avian Ann Biedermann, known to me to be the person whose name is subscribed to the foregoing affidavit and after having been duly sworn stated on her oath that she is the Petitioner in the above captioned case, that she has read the foregoing affidavit and that it is true and correct.


Avian Ann Biedermann

SWORN TO AND SUBSCRIBED before me by the said Avian Ann Biedermann on this the 18 day of December, 2000.




Notary Public in and for the
State of Texas

GILLESPIE COUNTY LEAF
DISTRICT OF TARRANT
COUNTY OF TARRANT

11/18/2000

NOTARY PUBLIC
GILLESPIE COUNTY
STATE OF TEXAS

FILED
At 3:00 O'clock P M

No. 9284

DEC 18 2000

IN THE DISTRICT COURT OF
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By /s/ [Signature]
Deputy

IN THE MATTER OF §
THE MARRIAGE OF §
§
AVIAN ANN BIEDERMANN §
AND §
KENNETH KYLE BIEDERMANN §
§
AND IN THE INTERESTS OF §
KYL A RAE BIEDERMANN, §
EMILY LAINE BIEDERMANN, §
LOREN NOEL BIEDERMANN AND §
DANA TRUE BIEDERMANN, MINOR §
CHILDREN §

GILLESPIE COUNTY, T E X A S

216th JUDICIAL DISTRICT

Affidavit for UCCJEA Information

Avian Ann Biedermann appeared in person before me today and stated under oath:

"My name is Avian Ann Biedermann. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am the Petitioner in this case.

"The children's present address is 110 W. Hackberry St., Fredericksburg, Texas.

"For the past five years immediately preceding the date of this affidavit, the children have lived at the following address with the following persons:

Address: 110 W. Hackberry St., Fredericksburg, Texas
Persons lived with: Avian Ann Biedermann and Kenneth Kyle Biedermann
From: 1/26/92 until present.

"The present address of Avian Ann Biedermann and Kenneth Kyle Biedermann is 110 W. Hackberry St., Fredericksburg, Texas.

"I have not participated, as a party or as a witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the children in Texas or any other state.

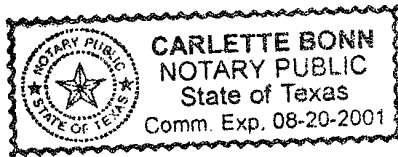
"I do not know of any proceeding that could affect this proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions.

"I do not know of any person not a party to this proceeding who has physical custody of the children or claims rights of legal custody or physical custody of, or visitation with, the children.


Avian Ann Biedermann

SIGNED under oath before me on December 18, 2000.


Carlette Bonn
Notary Public, State of Texas



STATE OF TEXAS
COUNTY OF TARRANT
AFFIDAVIT

S:\Cases\ABC\Biedermann\Affidavit.UCCJEA.wpd

VI
NOTARY
PUBLIC

COUNTY OF GILLESPIE
THE STATE OF TEXAS
BARBARA MEYER, DISTRICT CLERK
101 WEST MAIN STREET, ROOM # 204
FREDERICKSBURG, TEXAS 78624
210-997-6517

R E C E I P T

I RECEIVED FROM BARBARA MEYER, GILLESPIE COUNTY DISTRICT CLERK,
A CERTIFIED COPY OF:

TEMPORARY RESTRAINING ORDER AND ORDER SETTING HEARING FOR TEMPORARY ORDERS

IN CAUSE NO. 9284

STYLED: AVIAN ANN BIEDERMANN

VS.
KENNETH KYLE BIEDERMANN

FILED
At 3:00 O'clock P M

DEC 18 2000

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer

SIGNED: *Hazel Penick*

TITLE: *Notary Public*

TIME: 2:55 O'CLOCK P M

DATE: 12-18-00

(THE ABOVE WAS DELIVERED/MAILED TO City of Fredericksburg Police Department,
Gillette County Sheriff's Office, Constable # One and Constable # Two)

DEC 18 2000

FILED
O'CLOCK
M

COUNTY OF GILLESPIE
THE STATE OF TEXAS
BARBARA MEYER, DISTRICT CLERK
101 WEST MAIN STREET, ROOM # 204
FREDERICKSBURG, TEXAS 78624
210-997-6517

R E C E I P T

I RECEIVED FROM BARBARA MEYER, GILLESPIE COUNTY DISTRICT CLERK,
A CERTIFIED COPY OF:

TEMPORARY RESTRAINING ORDER AND ORDER SETTING HEARING FOR TEMPORARY ORDERS

IN CAUSE NO. 9284

STYLED: AVIAN ANN BIEDERMANN

VS.

KENNETH KYLE BIEDERMANN

FILED
At 3:01 O'clock P M

SIGNED: *Nigel Rando*

TITLE: *Dispatch*

TIME: 2:55 O'CLOCK P M

DATE: 12-18-00

DEC 18 2000

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer

GILLESPIE COUNTY CLERK
(THE ABOVE WAS DELIVERED/MAILED TO City of Fredericksburg Police Department,
xxxx Gillespie County Sheriff's Office, Constable # One and Constable # Two)

O'CLOCK
FILED

COUNTY OF GILLESPIE
THE STATE OF TEXAS
BARBARA MEYER, DISTRICT CLERK
101 WEST MAIN STREET, ROOM # 204
FREDERICKSBURG, TEXAS 78624
210-997-6517

FILED
At 3:46 O'clock P M

DEC 18 2000

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By Mona Munoz, Deputy

R E C E I P T

I RECEIVED FROM BARBARA MEYER, GILLESPIE COUNTY DISTRICT CLERK,
A CERTIFIED COPY OF:

TEMPORARY RESTRAINING ORDER AND ORDER SETTING HEARING FOR TEMPORARY ORDERS

IN CAUSE NO. 9284

STYLED: AVIAN ANN BIEDERMANN

VS.

KENNETH KYLE BIEDERMANN

SIGNED: *W. A. Otto*

TITLE: Constable # 2

TIME: 3:45 O'CLOCK P M

DATE: 12-18-00

GILLESPIE COUNTY, TEXAS
DISTRICT CLERK

(THE ABOVE WAS DELIVERED/MAILED TO City of Fredericksburg Police Department,
Gillette County Sheriff's Office, Constable # One and Constable # Two)

W O'CLOCK W
FILED

THE STATE OF TEXAS

To: KENNETH KYLE BIEDERMANN
110 West Hackberry Street
Fredericksburg, Texas 78624

, Respondent, Greeting:

You are commanded to appear by filing a written answer to the petitioner's petition at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof, before the Honorable District Court of Gillespie County for the 216th Judicial District of Texas, at the Court House in Fredericksburg, Texas. Said petitioner's petition was filed on the 18th day of December, 2000.

The file number of said suit being No. 9284

The style of the case is:

In the matter of the marriage of AVIAN ANN BIEDERMANN, Petitioner

and

KENNETH KYLE BIEDERMANN, Respondent

FILED

At 3:00 O'clock PM

DEC 19 2000

, Petitioner,

BARBARA MEYER DISTRICT CLERK

GILLESPIE COUNTY, TEXAS

By Ina Mung, Deputy Respondent

The name and address of the attorney for petitioner, or the address of petitioner is: HON. JOHN NICHOLS and HON. PAMELA K. BERGMAN, 1301 McKinney, Suite 3636, Houston, Texas

A copy of petitioner's petition accompanies this citation. (Affidavits Also Attached)

Issued this the 18th day of December, A.D., 2000.

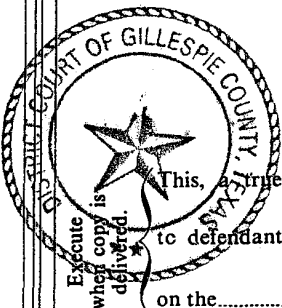
NOTICE TO RESPONDENT: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Given under my hand and seal of said Court, at office in Fredericksburg,

Texas, this the 18th day of December, A.D., 2000.

Barbara Meyer Clerk
District Court, Gillespie County, Texas
By Deputy

Address of Clerk: Gillespie County Courthouse
101 West Main Street, Rm. #204
Fredericksburg, Texas 78624-3700



This, a true copy of the original Citation was delivered to defendant by Sheriff/Constable, County, Texas.

on the day of By Deputy.

(Rule 106)

ORIGINAL RETURN TO COURT

Copy to atty 12-20-00

ORIGINAL

THE STATE OF TEXAS

To KENNETH KYLE BIEDERMANN
110 West Hackberry Street
Fredericksburg, Texas 78624 GREETING:

WHEREAS, AVIAN ANN BIEDERMANN
filed Original petition in the 216th District Court of Gillespie County,
Texas, on the 18th day of December, 2000, in a suit numbered 9284 on
the Docket of said Court, wherein

AVIAN ANN BIEDERMANN, Petitioner ~~Plaintiff~~,
is/are Petitioner, and
KENNETH KYLE BIEDERMANN, Respondent ~~Defendant~~,
is/are Respondent,

alleging

see attached copy of the ORIGINAL PETITION FOR
(Affidavits Also Attached)

FILED
At 3:01 O'clock P M

DEC 19 2000

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By I. Pina Mungu, Deputy

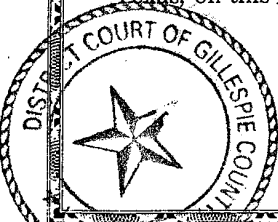
all of which is more fully shown by a true and correct copy of the Original petition which is attached hereto;
and upon presentation of said petition to the Court and consideration thereof, the Honorable Stephen B. Ables
Judge of said Court, made the following order thereon:

see attached certified copy of the TEMPORARY RESTRAINING ORDER AND
ORDER SETTING HEARING FOR TEMPORARY ORDERS
You are therefore commanded to desist and refrain from
see attached certified copy of the TEMPORARY RESTRAINING ORDER AND
ORDER SETTING HEARING FOR TEMPORARY ORDERS

~~XXXXXX~~
until and pending the hearing of such petition upon petitioner's application for a temporary injunction, before the judge of
said Court at 9:00 o'clock A. M. on the 2nd day of January ~~xxx~~ 2000, in the
District court room in the court house of Kendall County,
in the City of Boerne, Texas when and where you will appear to show cause why
injunction should not be granted upon such petition effective until final decree in such suit.

The officer executing this writ shall promptly execute the same according to law and the mandates hereof, and make his
return within the time and in the manner provided for by law.

Issued and given under my hand and the seal of this court at office in Fredericksburg,
Texas, on this 18th day of December A.D. ~~19~~ 2000, at 1:15 o'clock P.M.



Copy to atty
12-20-00
ORIGINAL

Attest: Barbara Meyer Clerk
216th District Court,
Gillespie County, Texas.
By _____, Deputy.

RETURN TO COURT

COUNTY OF GILLESPIE
THE STATE OF TEXAS
BARBARA MEYER, DISTRICT CLERK
101 WEST MAIN STREET, ROOM # 204
FREDERICKSBURG, TEXAS 78624
210-997-6517

R E C E I P T

I RECEIVED FROM BARBARA MEYER, GILLESPIE COUNTY DISTRICT CLERK,
A CERTIFIED COPY OF:

TEMPORARY RESTRAINING ORDER AND ORDER SETTING HEARING FOR TEMPORARY ORDERS

IN CAUSE NO. 9284

STYLED: AVIAN ANN BIEDERMANN

VS.
KENNETH KYLE BIEDERMANN

SIGNED: 

TITLE: CONSTABLE PCT. #1

TIME: 0800 O'CLOCK A M

DATE: 12-27-00

FILED
At 8:10 O'clock A M

DEC 27 2000

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By Nora Mearns, Deputy

(THE ABOVE WAS DELIVERED/MAILED TO City of Fredericksburg Police Department,
ONxx Gillespie County Sheriff's Office, Constable # One and Constable # Two)

VI O'CLOCK W
FILED

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT

GILLESPIE COUNTY, TEXAS

FILED
At 9:25 O'clock AM

DEC 28 2000

216TH JUDICIAL DISTRICT
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer

RESPONDENT'S ORIGINAL ANSWER

TO THE HONORABLE COURT:

KENNETH KYLE BIEDERMANN, respondent, files this original answer to
petitioner's original petition, and by way of answer shows:

I.

Respondent denies generally each and every allegation in petitioner's original
petition.

II.

Respondent denies any claim for reimbursement to be made by Respondent or by
the community estate to Petitioner's estate. Petitioner's separate estate and the
community estate have received value or quid pro quo, and there has not been unjust
enrichment to the detriment of the community estate of the parties. Respondent has been
compensated reasonable and justly for Respondent's work, time, labor, and effort, and

Petitioner has enjoyed, used, and benefited from the community compensation and benefit. Respondent has not devoted an excessive amount of time, talent, or labor to the management of Respondent's separate estate. Such efforts were reasonable and prudent to preserve Respondent's separate estate and did not work to the detriment of Petitioner or the community estate.

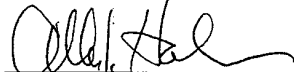
III.

It has been necessary for the preservation of respondent's rights and property to employ a licensed attorney to represent respondent in this suit. Respondent has agreed to pay this attorney for services rendered in connection with this action the sum of \$2,500.00, which sum is a reasonable attorney's fee. Therefore, judgment should be rendered against petitioner for a reasonable attorney's fee in the sum of \$2500.00, and in the event of an appeal to the court of appeals, for the further sum of \$5000.00 as a reasonable attorney's fee for services rendered in connection with the appeal.

WHEREFORE, respondent requests that the Court dismiss this cause, that the Court order that petitioner take nothing by this suit, that judgment be awarded against petitioner in favor of KENNETH KYLE BIEDERMANN, respondent or ALLEN J. HALM for reasonable attorney's fees and that respondent recover all costs together with such other and further relief to which respondent may be justly entitled.

Respectfully submitted,

The Law Offices of A. J. Halm

By: 

Allen J. Halm
SBOT #08804350

307 W. Main, Suite 101

Fredericksburg, Texas 78624
(830) 997-6975
(830) 997-9485 FAX

ALTERNATIVE DISPUTE RESOLUTION CERTIFICATION

I am a party to this case. The following statement is intended to comply with the policy of the State of Texas pursuant to Chapter 154 of the Texas Civil Practice and Remedies Code and the provisions of the Texas Family Code §§3.522 and 102.0085:

"I AM AWARE THAT IT IS THE POLICY OF THE STATE OF TEXAS TO PROMOTE THE AMICABLE AND NONJUDICIAL SETTLEMENT OF DISPUTES INVOLVING CHILDREN AND FAMILIES. I AM AWARE OF ALTERNATIVE DISPUTE RESOLUTION METHODS INCLUDING MEDIATION. WHILE I RECOGNIZE THAT ALTERNATIVE DISPUTE RESOLUTION IS AN ALTERNATIVE TO AND NOT A SUBSTITUTE FOR A TRIAL AND THAT THIS CASE MAY BE TRIED IF IT IS NOT SETTLED, I REPRESENT TO THE COURT THAT I WILL ATTEMPT IN GOOD FAITH TO RESOLVE BEFORE FINAL TRIAL CONTESTED ISSUES IN THIS CASE BY ALTERNATIVE DISPUTE RESOLUTION WITHOUT THE NECESSITY OF COURT INTERVENTION?"



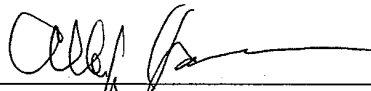
KENNETH KYLE BIEDERMANN, Respondent

CERTIFICATE OF SERVICE

I certify that a true copy of Respondent's Original Answer has, on this day, been sent by certified mail to Pam Bergman, 1301 McKinney, Suite 3636, Houston, Texas 77010, attorney of record for petitioner.

SIGNED this 28th day of December, 200

CHITERSIE COTIVLA JEXVW
DOLICI CTEBK
EYUBVWV WEACH



Allen J. Halm, Attorney for Respondent

11 0. CLOCK 11
LITED

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

Telephone: (713) 654-0708

Fax: (713) 654-0706

PAMELA K. BERGMAN

Board Certified-Texas Board of Legal Specialization-
Personal Injury-Civil Trial-Family Law
Member National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext.117

December 28, 2000

Via Federal Express

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216 Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Please find enclosed two copies of the Motion to Extend Temporary Restraining Order. Please file with the court, and return a filed copy in the stamped addressed envelope. *VM 12-29-00*

Very truly yours,

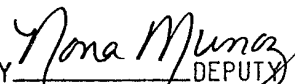

Pamela Bergman
For the Firm

jld

FILED
BARBARA MEYER
DISTRICT CLERK

2000 DEC 29 A 10:01

GILLESPIE COUNTY, TEXAS

BY  DEPUTY

No. 9284

FILED
BARBARA MEYER
DISTRICT CLERK

DEC 29 A 10:01

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT
GILLESPIE COUNTY, TEXAS
BY Nona Munz DEPUTY
GILLESPIE COUNTY, T E X A S
216TH JUDICIAL DISTRICT

Motion to Extend Temporary Restraining Orders

This Motion to Extend Temporary Orders is brought by Avian Ann Biedermann, Petitioner, who shows in support:

On December 18, 2000 a temporary restraining order was issued and a hearing was set for January 2, 2001, as attached hereto as Exhibit 1. Good cause exists for extension because a hearing date for January 2, 2001 has been set by the court.

Avian Ann Biedermann prays that the Court grant the Motion to Extend Temporary Orders.

LAW OFFICE OF JOHN NICHOLS

BY PERMISSION

* John Nichols
John Nichols
State Bar No.: 14996000

BY PERMISSION

* Pamela K. Bergman
Pamela K. Bergman
State Bar No.: 00795804
1301 McKinney, Suite 3636
Houston, Texas 77010
Attorneys for Avian Anne Biedermann,

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216 JUDICIAL DISTRICT

**TEMPORARY RESTRAINING ORDER
AND ORDER SETTING HEARING FOR TEMPORARY ORDERS**

The application of Petitioner for temporary restraining order was presented to the Court today.

The children the subject of this suit are Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann.

The Court examined the pleadings and affidavit of Petitioner and finds that Petitioner is entitled to a temporary restraining order.

IT IS THEREFORE ORDERED that the clerk of this Court issue a temporary restraining order restraining Petitioner and Respondent, and Petitioner and Respondent are immediately restrained, from:

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

FILED
At 12:36 O'clock AM

EXHIBIT
1

DEC 18 2000
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

4. Causing bodily injury to the other party or to a child of either party.
5. Threatening the other party or a child of either party with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
7. Falsifying any writing or record relating to the property of either party.
8. Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
9. Damaging or destroying the tangible property of one or both parties, including any document that represents or embodies anything of value.
10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.
12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.
13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.
14. Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by order of this Court.
15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.

16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.
17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent or the parties' children.
19. Canceling, altering, or in any manner affecting the present level of coverage of any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' children.
20. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at either party's residence or in any manner attempting to withdraw any deposits for service in connection with those services.
21. Excluding the other party from the use and enjoyment of the other party's residence.
22. Opening or diverting mail addressed to the other party.
23. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.
24. Taking any action to terminate or limit credit or charge cards in the name of the other party.
25. Entering, operating, or exercising control over the motor vehicle in the possession of the other party.
26. Discontinuing or reducing the withholding for federal income taxes on the other party's wages or salary while this case is pending.
27. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including cancelled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

28. Molesting or disturbing the peace of the children or of another party.
29. Removing the children beyond the jurisdiction of the Court, acting directly or in concert with others.
30. Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled.
31. Hiding or secreting the children from the other party or changing the children's current place of abode.

IT IS FURTHER ORDERED that the parties are authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

To engage in acts reasonable and necessary to conduct the party's usual business and occupation.

This restraining order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law. This order shall be binding on the parties; on the parties' agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

IT IS FURTHER ORDERED that the clerk shall issue notice to Respondent, Kenneth Kyle Biedermann, to appear, and Respondent is ORDERED to appear in person, before this Court in the courthouse at 101 West Main St., Fredericksburg, Texas, on Jan 2, 2008 at 9:00 A. M. The purpose of the hearing is to determine whether, while this case is pending: *Boerne*
subject to Jury Doctet

- 1 The preceding temporary restraining order should be made a temporary injunction pending final hearing.
2. The additional temporary injunction prayed for should be granted.
3. Petitioner should be awarded the exclusive use and possession of the parties'

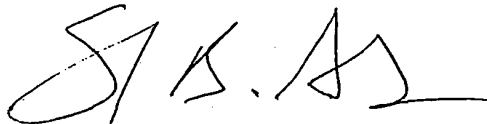
residence, furniture, and furnishings at 110 W. Hackberry St., Fredericksburg, Texas while this case is pending, and Respondent should be enjoined from entering or remaining on the premises of the residence, except as authorized by order of this Court.

4. Petitioner should be awarded exclusive use and control of the _____ motor vehicle, and Respondent should be enjoined from entering, operating, or exercising control over it.
5. Petitioner should be appointed sole managing conservator.
6. Respondent should be ordered to pay child support, health insurance premiums for coverage on the children, and the children's uninsured medical expenses while this case is pending.
7. The Court should order the preparation of a social study into the circumstances and condition of the children and of the home of any person requesting managing conservatorship or possession of the children.
8. Respondent should be appointed temporary possessory conservator.
9. The Court should order the psychological evaluation of the parties and the children.
10. The Court should appoint a guardian and attorney ad litem to represent the interests of the children.
9. The Court should order Respondent to produce copies of income tax returns for tax years 1989 - 1999, a current financial statement, and current pay stubs by a date certain.
10. The Court should order Respondent to pay reasonable interim attorney's fees and expenses.
11. The Court should order Respondent to pay estimated income taxes on the due dates as required by the Internal Revenue Service and under the Social Security numbers of both Petitioner and Respondent and to pay any ad valorem taxes as due on the properties of the parties.
12. The Court should order Respondent to provide a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the

form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), form 7-1.

13. The Court should order Respondent to produce copies of all the tax information necessary to prepare Petitioner's tax returns for tax year 1999, including tax returns and all supporting schedules for years 1992 - 1998, by a date certain.
14. The Court should order Respondent to participate in an alternative dispute resolution process before trial of this matter.
15. The Court should order Respondent to execute all necessary releases required by Petitioner to obtain any discovery allowed by the Texas Rules of Civil Procedure.
16. The Court should order a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.
17. The Court should make all other and further orders respecting the property and the parties that are pleaded for or that are deemed necessary and equitable and for the safety and welfare of the children.

SIGNED on Dec. 18, 2000 at 12:30 P.M.



JUDGE PRESIDING

received
1-3-01

No. 9284

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
AVIAN ANN BIEDERMANN	§	
AND	§	
KENNETH KYLE BIEDERMANN	§	
	§	GILLESPIE COUNTY, T E X A S
AND IN THE INTERESTS OF	§	
KYLA RAE BIEDERMANN,	§	
EMILY LAINE BIEDERMANN,	§	
LOREN NOEL BIEDERMANN AND	§	
DANA TRUE BIEDERMANN, MINOR	§	
CHILDREN	§	216TH JUDICIAL DISTRICT

Order on Motion to Extend Temporary Restraining Order

On January 02, 2001 the Court considered the Motion to Extend Temporary Restraining Order of Avian Ann Biedermann and finds that good cause exists for extension of the temporary restraining order, in that a hearing has been set for January 02, 2001.

IT IS THEREFORE ORDERED that the Temporary Restraining Order is extended effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law. This order shall be binding on the parties; on the parties' agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

The Court resets the Hearing for Temporary Orders to January 12, 2001, at 9:00 a.m., in the 216th District Court of Gillespie County, Texas.

SIGNED on Jan 3, 2001



JUDGE PRESIDING

*No service or copies per
Atty. Bergman 1-3-01*

S:\Cases\ABC\Biedermann\Pleadings\Order on Motion to Extend TRO.wpd

*Copy To: 1-3-01
Allen J. Halm*

FILED

At 1:54 O'clock P M

CAUSE NO. : 9284

JAN 31 2001

IN THE INTEREST OF

KYL A RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN

MINOR CHILDREN

§
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§

IN THE DISTRICT COURT

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By Thana Mungz, Deputy

216TH JUDICIAL DISTRICT

GILLESPIE COUNTY, TEXAS

HILL COUNTRY CASA REPORT

DATE: January 29, 2001
PRESIDING JUDGE: THE HONORABLE CHARLES SHERRILL
MOTHER'S ATTORNEY: PAMELA K. BERGMAN
FATHER'S ATTORNEY: ALLEN J. (JODY) HALM
CASA VOLUNTEER: JACK FRANKLIN

On January 22, 2001 Hill Country CASA was court ordered to make inquiry into the situation and circumstances surrounding the above mentioned children.

BACKGROUND: On December 18, 2000 Avian Anne Biedermann filed a petition for divorce from Kenneth Kyle Biedermann and she asked the court to appoint her as sole managing conservator of their four daughters. She filed a supporting affidavit concerning the actions of Mr. Biedermann. To determine what is in the best interest of the minor children, this CASA did a home study and interviewed many people seeking verification of allegations made by both Mr. and Mrs. Biedermann.

CONTACTS:

Avian Anne Biedermann	Mother of the Minor Children
Kenneth Kyle Biedermann	Father of the Minor Children
Arden Ann White	Maternal Grandmother
John Pope	Living Companion of Mrs. White
Libby & Kenneth Biedermann	Paternal Grandparents
Carol Bradshaw	Family Friend & Client of Avian
Bobbie Klien	Teacher of Kyla Rae Biedermann
Shellby Elliott	Friend of Avian Biedermann
Mary Mustard	Friend of Avian Biedermann
Pam Dale	Family Friend
Rosanna Hurley	Sister of Avian Biedermann
Tara Stark	Sister of Avian Biedermann
Terry & Julie Burns	Friend of Kyle Biedermann
Joan Gilbert	Neighbor and Client of Avian
Jodie Seagers	Family Friend
Helen Bartholomee	Works with Arden White
Kim Sutton	Family Friend
Leslie Harper	Licensed Professional Counselor

Home: 110 W. Hackberry St. Fredericksburg, Texas

The residence was visited on Jan. 19, 2001. Both Avian and Kyle Biedermann currently reside at the home with their four children. The home is an older frame two-story home, which has been remodeled. There is still work to be done to finish the remodel. The home was clean and uncluttered the day CASA visited. The home has three bedrooms, two full baths, kitchen/breakfast, living room, dining room, den, and a salon where Mrs. Biedermann operates her business. The girls share two bedrooms upstairs and the master bedroom is downstairs. No unsafe conditions were noted.

INFORMATION GATHERED:

Kenneth Kyle Biedermann (DOB 4-30-59) was born and attended high school in Blue Point, NY. Higher education includes a BBA from the University of South Florida in 1982 and additional training as a financial advisor. His hobby is playing basketball. He is an Elder at the Hill Country Evangelical Free Church in Fredericksburg.

In 1986 Mr. Biedermann moved to Fredericksburg from California when he purchased Ace Hardware. Avian and Kyle were married on April 22, 1989. Their first child, Kyla Rae, was born on Jan. 26, 1992 followed by Emily (July 15, 1993), Loren (Dec. 20, 1994) and Dana (March 22, 1996).

Kyle Biedermann told CASA that he believed in strong discipline and liked to have the children with him all of the time. He said that he had lost respect for Avian because she spent all of "her" money on things and would not work and share a budget. He stated that she also refused to get up in the mornings and would not do any housework. He alleges also that she takes pride in doing "only what she wants to do".

Mr. Biedermann acknowledged that this marriage had not been going well for several years. He stated that he and his wife continue to have financial problems and that this has caused many of their other problems. He stated his belief that Avian was not taught good parenting skills because her mother was divorced three times and now lives across the street from the Biedermann family home with John Pope; a man she is not married to. He is concerned about the children being left with their maternal grandmother in an atmosphere the he does not think appropriate. He stated that Mr. Pope had been very abusive to his mother-in-law and that he had helped her move out four different times.

CASA inquired about various items in the supporting affidavit filed by Avian Biedermann on Dec. 18, 2001. We went over each item and Kyle Biedermann basically said that the affidavit was a very slanted view of what really had happened. He admitted that he should perhaps

have acted differently but feels that the conclusions his wife suggested were not true. Particular attention was focused on the accusation that he had become aroused while playing with his daughters. Mr. Biedermann acknowledged the incident but said that this had happened while the girls were jumping up and down on him while playing on the couch. He said that, during the play, his daughters had kicked him several times and that had caused his erection. He said that was all that caused it.

When asked about discussing adult topics with nine year old Kyla, he said that he had probably discussed too much about the family's financial problems but that was all he felt was inappropriate. He admitted to some of the name-calling and said he realized that to was inappropriate. He said that the statement about the child's wrists being broken was true but that he had spoken with the doctor and had been told that these were minor fractures; which would actually heal themselves. He said that the family's constant financial problems made him reluctant to send the girls to the doctor. He stated that Avian did not want to pay for this medical care from her income either.

Kyle Biedermann told CASA that he really did not want a divorce but if one was granted he believes that the children will be better off living with him. He said that he is the one who gets the children up and cooks breakfast for them and takes them to school. He stated that Avian stays in bed until nine or ten in the morning and then she sits and drinks coffee and does not talk to any of them. He stated that his wife does not clean the house and that she stays up late every night watching movies with her sister Tara.

Mr. Biedermann said he would do "whatever it takes" to provide for the girls. He stated that he was willing to allow Avian to continue to use the salon (in the family home) for her business. He thinks that his wife could move in with her mother, across the street, and that she could see the children whenever she wanted to. His parents and two aunts live a few blocks away and all have volunteered to help him as needed. The senior Biedermanns want very much to spend time with their granddaughters and be able to be a part of their lives.

Avian Anne Biedermann (DOB 5-13-61):

Avian grew up in and around Kerrville, Texas. She completed the eleventh grade at Tivy High School and then attended and graduated in 1979 from Conlee's College of Cosmetology. She has worked as a cosmetologist in several shops in Kerrville and Fredericksburg. She is the daughter of Franklin J. Ferguson who resides in Kerrville and Arden Ann White who resides in Fredericksburg. She now attends First Baptist Church in Fredericksburg where she sings in the choir. Her sisters Tara Stark and Rosanna Hurley have helped in taking care of Avian and Kyle's four daughter. Avian currently operates a beauty salon, part-time, from her home.

Mrs. Biedermann told CASA that motivating natural gifts and spending

time with the girls is important to her. She also believes that there should be a balance of love and discipline in caring for her girls. She feels that her daughters need regular schedules that they can understand and follow. She said that she sets schedules for the girls and then Kyle breaks them; which has undermined both her discipline and the children's respect for her. (This difference in how and when to discipline the girls apparently is a real problem between the parents.) Mrs. Biedermann gave the example that she tried to get the girls in bed by 8:30 on school nights. However, she stated that Kyle would often go in and start playing with the girls and they would all be jumping around and making lots of noise which got the girls excited and then they did not want to go to sleep. She also said that Kyle often gets upset with the girls when it is really his fault that they are acting the way they do.

We discussed the allegations made by Kyle concerning her sleeping late every day. She said that she and Kyle had agreed when they got married that she was not a "morning person" and that he liked to get up and cook breakfast and that was the way it had been. When asked what she would do if she had custody of the children; she said she would have to change her habits of staying up late and adjust to get up and take care of the girls. She said that she gets up and takes care of them now if Kyle is not available. Avian acknowledged that she was not the world's best housekeeper but that she did not let the house get dirty and felt that she did an OK job considering that she has four very active daughters. She stated that she believed Kyle's standards were just too high given the age of the children.

CASA discussed the affidavit she had filed with the Court. Her main points were that, as their marriage deteriorated, Kyle had become more and more controlling and that his anger had increased. She said that the boot incident was the only time he had actually struck her but she was concerned that he was getting more violent as time passed. She believes that Kyle is trying to control her by controlling the family's money and that is why she has kept her income separate and not allowed him to "budget" it.

When asked what she believes will be the best for the children she said they should remain with her. She stated that she would let them go if she did not think that was so. CASA asked why she believed she was the best custodial choice and her reasons were as follows:

1. that she believes young girls should be with their mother
2. that she believes Kyle to be selfish and self-centered and that he did not think out what was best for the girls; only what he wanted to do
3. that she believes Kyle to be an "image person" who acts very proper when around others so that they would think highly of him
4. that she believes she has more common sense than Kyle does
5. that she is not sure if his arousal when he played with the girls is a problem or not but does not want to take a chance on anything happening
6. that she wants control of her life back

Children's situation: (The four Biedermann children range in age from nine years to four years.)

Interviews with collateral references would suggest that Avian is the firmer disciplinarian and that Kyle enjoys playing with the children so much that he perhaps forgets that he a parent. The children enjoy all of this playing around and the two older two girls told CASA that, if they had to live with one or the other, they would rather be with their father.

According to her teacher, nine-year-old Kyla is exhibiting some negative behavior at school and there is feeling that these behaviors are because of discord going on in the home. Last year Kyla was experiencing the same kinds of difficulty and she had several sessions with Leslie Harper, a Licensed Professional Counselor in Fredericksburg. Ms. Harper told CASA that she felt the parent's problems were making Kyla act the way she did. It appears obvious that these children are aware of the pending divorce and are having a hard time dealing with it.

Grandparents:

Kenneth and Libby Biedermann:

The senior Biedermanns reside at 411 E. College in Fredericksburg. They have a well maintained home in a nice area of town. Both of them expressed their desire to help Kyle in any way possible in raising the girls. Two of Libby Biedermann's sisters live in two houses next door to Mr. and Mrs. Biedermann. According to Libby Biedermann, her sisters are willing to help with the children also.

The Biedermanns are financially secure. Mr. Biedermann is able to relive Kyle at the hardware store when needed, as he worked there in the past. They believe that the four girls will be better off with Kyle because they feel their son is more stable and spends more time with the children that does Avian. Not surprisingly, they reported almost word for word what Kyle had told CASA about Avian and her parenting skills. They are fearful that they will not be allowed to see their granddaughters and help in raising them if Kyle does not have custody of the children.

Arden Ann White:

Mrs. White, Avian Biedermann's mother, lives at 107 W. Hackberry in Fredericksburg. Also living in the home is her mother (not interviewed) and Mr. John Pope. The home was in good repair and uncluttered. It is directly across the street from Avian and Kyle's home. Both Mrs. White and Mr. Pope said they would help as they could with the children. They stated that they both work from 3 P M to 11 P M and sleep late in the mornings. Avian's sister Tara spends a lot of time at the house and expressed her desire to help with the children. Avian's father was not contacted as he has little to do with the family now. Mrs. White thinks that Avian should have custody of the children because she feels Avian has better control of them. She said Kyle did strange things like waking the girls up at

3:00 a.m. so that they could go with him to take someone to the airport in San Antonio.

She told CASA that her oldest granddaughter, Kyla, was always asking if they had anything to give her so she could sell it and give the money to her dad. She reported that Kyle just lets the girls run wild. John Pope thinks that nine-year-old Kyla spends all of her time trying to please Kyle. They both reported, almost word for word, Avian's comments about Kyle.

CASA COMMENTS:

This case, like so many divorce cases, appears to be about two people who see each other much differently now than when they first married. Small faults have become large and, as they have discussed their situation with friends and relatives, conclusions about things appear to have been reinforced as they are repeated over and over. As this CASA interviewed friends of both Kyle and Avian, their friends had good things to say about both of them and most admitted that both were not without fault in the problems of the marriage.

The same statements were made over and over about the problems of either Kyle or Avian, depending on whose friends or which family we were speaking with. Based on these collateral interviews and on CASA's interviews with Kyle and Avian Biedermann, we did not find real evidence that would lead us to believe that either of the parties is unfit as a parent.

Both Avian and Kyle are good people with strong Christian views. However, it appears to CASA that years of unhappy marriage has made both of the parties disrespect one another and this is exhibited in their actions. Certainly there are things that both might do differently and some changes need to be made by both. However until each changes the perception they have of the other; that is not likely to happen.

There is some evidence that Kyle Biedermann is controlling and that he certainly has used abusive and belittling language around the children and Avian. Avian too has probably used unsuitable language around the children and when talking to Kyle. She may well have problems in the early morning care of the children but it seems very likely that she could resolve the early morning issues if needed.

The financial situation in this case appears to be one in which either parent could provide for the children with help from others. Kyle's parents have said they will help if needed. Attached to this report are financial statements provided by Kyle and Avian Biedermann.

CASA RECOMMENDATIONS:

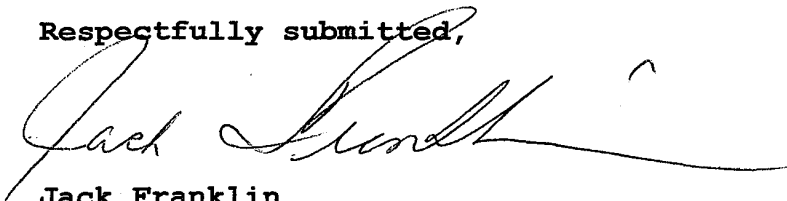
Both Kyle and Avian Biedermann have said that they will participate in mediation in an effort to resolve the custody matter. CASA has strongly encouraged them to work this out in mediation.

These parents know better than CASA or the Court what is in the best interest of these four young girls. Hopefully Mr. and Mrs. Biedermann will use the love they have for their children to reach a solution that will accord the girls the best home life under the circumstances. It is encouraging that both of these parents and all the grandparents care greatly for these four girls. It is time to show this compassion by working out custody so that the children benefit from all the parents and the grandparents have to offer them.

If Mr. and Mrs. Biedermann are not able to work this out and the court is forced to settle the matter for them, this CASA makes the following observations:

- Either party is capable of being the primary custodian of the children; if given court ordered financial relief. This is partial true due to the close proximity that all parties have to one another in Fredericksburg.
- Visitation rights should be extensive for the non-custodial parent and for the grandparents as well. These children have an on going relationship with all their grandparents and it is in the children's' best interest to protect this relationship.
- It is in the best interest of the children that they not be moved to a different town by their custodial parent without permission of the court and re-examination of visitation and other decrees of the order.
- Both Kyle and Avian Biedermann should be required to attend parenting classes in the near term and immediately attend the county provided classes on divorce and how to deal with minor children during a divorce.
- Provisions should be made for nine-year-old Kyla and seven-year-old Emily to be provided professional counseling by Leslie Harper who specializes in child and adolescent counseling.

Respectfully submitted,



Jack Franklin
Hill Country CASA
Volunteer



Diane L. Oehler
Hill Country CASA
Executive Director

Financial Information

Date	Jan 22, 2001	
Name	Kyle Biedermann	
Income:		
Source	Amount Per Month	After Tax Amount
ACE Salary - Net	1780	
Total Income =	\$	
Monthly Expenses:		
Item	Monthly Payment	BAL Balance Explanations
Water		
Electric + water	110	Average last Year - Higher Now
Gas	57	" " " - Much Higher Now
Auto Groceries	150	Avian is supposed to buy all groceries
Auto Dining Out	110	
Gasoline		Paid By ACE for Avian + J
Credit Card Telephone	55	Same number for Home + Shop
Credit Card Home Improvement	125	1200 Acct at ACE - Remodeling Exp
Credit Card GOSTM	25	550 Side Business
Credit Card Attorney Fees	100	1000 Divorce Expenses -
Home Pmt or Rent	928	68000 Mortgage includes TAX + Ins.
Child Care Home Equity loan	292	22800 Used to pay off C.C. Debt last Year
Insurance		
Insurance		
Insurance		
Proerty Taxes		
Installment Note		
Installment Note		
Installment Note		
Installment Note		
Other - School Tuition	200	Heritage Family School
Other - School Exp.	50	
Other		
Misc - Gifts		
Household Exp.	100	
Medical		
Entertainment		
Tithe	100	
Total Payments	\$ 2402	
Net Cash Flow	<622>	

Financial Information

Date	1/21/01	
Name	Ariana A. Biederman	
Income:		
Source	Amount Per Month	After Tax Amount
Salon - Self employed The Primrose Park Salon	1940.25	Net - 10,015 Gross - 16,219
Total Income =	\$ 23,283	
Monthly Expenses:		
Item	Monthly Payment	Balance
Water		
Ele		
Gas		
Auto	368.15	
Auto		
Gasoline		
Credit Card MBNA	30.00	
Credit Card Capital one	30.00	
Credit Card FCNB	30.00	
Credit Card JC Penney	108.00	
Home Pmt or Rent		
Child Care		
Insurance Car	72.00	
Insurance		
Insurance		
Proerty Taxes Salon	4.87 / month / 58.38 (yearly)	
Installment Note		
Installment Note		
Installment Note		
Installment Note		
Other Sales Taxes & Licenses	60.00 / month / 716.00 (yearly)	
Other Supplies for Salon	approx 400.00 to 500.00	
Other groceries	400.00	
Other - personal	170.00 / month / 200.00	
property		
duelies for kids	34.00	
Total Payments	\$ 1599.02 1675.00	1649.00
Net Cash Flow	291.23	

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

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PAMELA K. BERGMAN

Board Certified-Texas Board of Legal Specialization-
Personal Injury-Civil Trial-Family Law
Member National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext.117

January 02, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216 Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Please take the indicated action: **Notice of Reset of Hearing for Temporary Orders**

- (X) File among papers in the above cause.
- (X) File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger. ✓ 1-4-01 *lem*
- () A filing fee is enclosed in the amount of \$_____.
- () Present to Judge for hearing date and signature.
- () Demand for jury.
- (X) By copy hereof, those persons whose names appear below are being notified of this filing..

Very truly yours,

Pamela K. Bergman
For the Firm

PKB:jld

Enclosure

cc: Avian Ann Biedermann
Allen J. (Jody) Halm

FILED
BARBARA MEYER
DISTRICT CLERK

2001 JAN -4 A 11: 28

GILLESPIE COUNTY, TEXAS

Barbara Meyer, D. Clerk
BY _____ DEPUTY

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

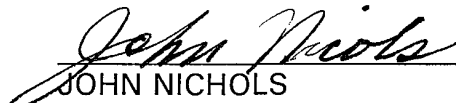
§ IN THE DISTRICT COURT OF
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§ GILLESPIE COUNTY, T E X A S
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§
§ 216TH JUDICIAL DISTRICT


Notice of Reset of Hearing for Temporary Orders

Please take notice that the Hearing for Temporary Orders has been reset to January 12, 2001, at 9:00 o'clock a.m., in the 216th District Court of Gillespie County, Texas.

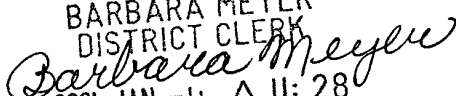
Respectfully submitted,

LAW OFFICES OF JOHN NICHOLS


JOHN NICHOLS
SBT #14996000


PAMELA K. BERGMAN
SBT #00795804
1301 MCKINNEY, SUITE 3636
HOUSTON, TEXAS 77010
713/654-0708
713/654-0706 FAX

ATTORNEYS FOR PETITIONER

FILED
BARBARA MEYER
DISTRICT CLERK

2001 JAN -4 A 11: 28

BY _____ DEPUTY

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on January 02, 2001.



Pamela K. Bergman

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

Telephone: (713) 654-0708

Fax: (713) 654-0706

PAMELA K. BERGMAN

Board Certified-Texas Board of Legal Specialization-
Personal Injury-Civil Trial-Family Law
Member National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext.117

January 02, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216 Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Enclosed please find Exhibit 1, Temporary Restraining Order, that we inadvertently failed to attached to our Motion to Extend Temporary Restraining Order. Please file same with the court, and accept our apologies for the oversight. *attached to motion*

Very truly yours,



Pamela K. Bergman
For the Firm

PKB:jld

Enclosure

FILED
BARBARA MEYER
DISTRICT CLERK
2001 JAN -4 A 11: 28
GILLESPIE COUNTY, TEXAS

FILED
BARBARA MEYER
DISTRICT CLERK

2001 JAN -4 A 11: 28

GILLESPIE COUNTY, TEXAS

Barbara Meyer
BY District DEPUTY
Clerk



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

January 3, 2001

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main Street, Suite 204
Fredericksburg, Texas 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Ms. Meyer:

Enclosed is the original Order on Motion to Extend Temporary Restraining Order which was faxed to you earlier today. Copies of the Order have also been faxed to Jody Halm and Pamela Bergman.

Very truly yours,

A handwritten signature in cursive script that reads "Stephen B. Ables".

Stephen B. Ables
216th District Judge

SBA:bh

Enclosures

FILED
BARBARA MEYER
DISTRICT CLERK

2001 JAN -5 A 11:30

GILLESPIE COUNTY, TEXAS

BY ANNA MUNOZ DEPUTY
A handwritten signature in cursive script that reads "Anna Munoz".

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216TH JUDICIAL DISTRICT

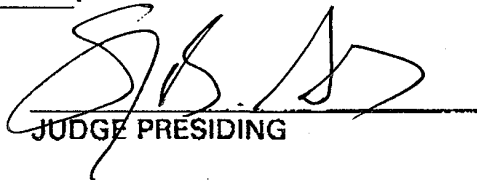
Order on Motion to Extend Temporary Restraining Order

On January 02, 2001 the Court considered the Motion to Extend Temporary Restraining Order of Avian Ann Biedermann and finds that good cause exists for extension of the temporary restraining order, in that a hearing has been set for January 02, 2001.

IT IS THEREFORE ORDERED that the Temporary Restraining Order is extended effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law. This order shall be binding on the parties; on the parties' agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

The Court resets the Hearing for Temporary Orders to January 12, 2001, at 9:00 a.m., in the 216th District Court of Gillespie County, Texas.

SIGNED on Jan 3, 2001



JUDGE PRESIDING

FILED
BARBARA MEYER
DISTRICT CLERK

2001 JAN -5 A 11: 30

GILLESPIE COUNTY, TEXAS

BY Nana Munoz DEPUTY

Barbara Key

LAST TRANSACTION REPORT FOR HP FAX-700 SERIES

VERSION: 01.02

FAX NAME: DISTRICT JUDGE OFFI
FAX NUMBER: 1 830 792 2294

DATE: 03-JAN-07
TIME: 09:43

DATE	TIME	REMOTE FAX NAME AND NUMBER	DURATION	PG	RESULT	DIAGNOSTIC
03-JAN	09:42 S	8309971540	0:00:47	2	OK	663840100164

Toby Halm

LAST TRANSACTION REPORT FOR HP FAX-700 SERIES VERSION: 01.0

FAX NAME: DISTRICT JUDGE OFFI
FAX NUMBER: 1 830 792 2294

DATE: 03-JAN-0
TIME: 09:4

<u>DATE</u>	<u>TIME</u>	<u>REMOTE FAX NAME AND NUMBER</u>	<u>DURATION</u>	<u>PG</u>	<u>RESULT</u>	<u>DIAGNOSTI</u>
03-JAN	09:40 S	830 997 9485	0:00:31	1	OK	6638403001E

Pamela Bellman

LAST TRANSACTION REPORT FOR HP FAX-700 SERIES

VERSION: 01.02

FAX NAME: DISTRICT JUDGE OFFI
FAX NUMBER: 1 830 792 2294

DATE: 03-JAN-01
TIME: 09:38

<u>DATE</u>	<u>TIME</u>	<u>REMOTE FAX NAME AND NUMBER</u>	<u>DURATION</u>	<u>PG</u>	<u>RESULT</u>	<u>DIAGNOSTIC</u>
03-JAN	09:38 S	1 713 654 0706	0:00:31	1	OK	66384030019E

FAX TRANSMISSION

LAW OFFICE OF JOHN NICHOLS

Chevron Tower
1301 McKinney Street, Suite 3636
Houston, Texas 77010
Telephone: (713) 654-0708
Fax: (713) 654-0706

To: Ms. Becky Henderson Date: January 2, 2001

Fax No: 830/792-2294 Pages: 12, including cover sheet.

From: Pamela K. Bergman

Subject: Re: *No. 9284; In the Matter of the Marriage of Avian Ann Biedermann and Kenneth Kyle Biedermann and In the Interest of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann, Minor Children; In the 216th Judicial District Court of Gillespie County, Texas.*

COMMENTS: Motion to Extend Temporary Restraining Orders and Notice of Reset of Hearing for Temporary Orders.

The originals of any correspondence transmitted with this cover sheet ___ will ___ will not be mailed or delivered to you.

If transmittal is incomplete, please call 713 654-0708.

CONFIDENTIALITY NOTICE

The information contained in this facsimile message is attorney/client privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivery to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to use at the above address via the U. S. Postal Service. Thank you.

LAW OFFICES of JOHN NICHOLS*Chevron Tower***1301 MCKINNEY STREET SUITE 3636****HOUSTON TEXAS 77010****Telephone: (713) 654-0708****Fax: (713) 654-0706****PAMELA K. BERGMAN**Board Certified-Texas Board of Legal Specialization-
Personal Injury-Civil Trial-Family Law
Member National Board of Trial Advocacy-Civil TrialWriter's Direct Dial:
(713) 654-0708 Ext.117

January 02, 2001

Ms. Becky Henderson
District Court Coordinator
Kerr County Courthouse
700 Main St.
Kerrville, Texas 78028-5389

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216 Judicial District of Gillespie County, Texas

Dear Ms. Henderson:

Enclosed please find a file stamped copy of our Motion to Extend Temporary Restraining Order and a copy of the Notice of Reset of Hearing for Temporary Orders per your request. We have sent the Notice to the District Clerk in Gillespie County for filing and faxed the same to Mr. Jody Halm, opposing counsel.

Please advise if we can be of further assistance to you. Thank you for your prompt attention to this matter.

Very truly yours,



Pamela K. Bergman
For the Firm

PKB:jld

Enclosures

No. 9284

FILED
BARBARA MEYER
DISTRICT CLERK

2000 DEC 29 A 10:01

GILLESPIE COUNTY, TEXAS

BY _____ DEPUTY

GILLESPIE COUNTY, TEXAS

IN THE MATTER OF §
 THE MARRIAGE OF §
 §
 AVIAN ANN BIEDERMANN §
 AND §
 KENNETH KYLE BIEDERMANN §
 §
 AND IN THE INTERESTS OF §
 KYLA RAE BIEDERMANN, §
 EMILY LAINE BIEDERMANN, §
 LOREN NOEL BIEDERMANN AND §
 DANA TRUE BIEDERMANN, MINOR §
 CHILDREN §

216TH JUDICIAL DISTRICT

Motion to Extend Temporary Restraining Orders

This Motion to Extend Temporary Orders is brought by Avian Ann Biedermann, Petitioner, who shows in support:

On December 18, 2000 a temporary restraining order was issued and a hearing was set for January 2, 2001, as attached hereto as Exhibit 1. Good cause exists for extension because a hearing date for January 2, 2001 has been set by the court.

Avian Ann Biedermann prays that the Court grant the Motion to Extend Temporary Orders.

LAW OFFICE OF JOHN NICHOLS

BY PERMISSION

* *John Nichols*
 John Nichols
 State Bar No.: 14996000

BY PERMISSION

* *Pamela K. Bergman*
 Pamela K. Bergman
 State Bar No.: 00795804
 1301 McKinney, Suite 3636
 Houston, Texas 77010
 Attorneys for Avian Anne Biedermann,

No. 9284

IN THE MATTER OF
 THE MARRIAGE OF

AVIAN ANN BIEDERMANN
 AND
 KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
 KYLA RAE BIEDERMANN,
 EMILY LAINE BIEDERMANN,
 LOREN NOEL BIEDERMANN AND
 DANA TRUE BIEDERMANN, MINOR
 CHILDREN

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IN THE DISTRICT COURT OF

GILLESPIE COUNTY, TEXAS

216^A JUDICIAL DISTRICT

**TEMPORARY RESTRAINING ORDER
 AND ORDER SETTING HEARING FOR TEMPORARY ORDERS**

The application of Petitioner for temporary restraining order was presented to the Court today.

The children the subject of this suit are Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann.

The Court examined the pleadings and affidavit of Petitioner and finds that Petitioner is entitled to a temporary restraining order.

IT IS THEREFORE ORDERED that the clerk of this Court issue a temporary restraining order restraining Petitioner and Respondent, and Petitioner and Respondent are immediately restrained, from:

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

FILED
 At 12:36 O'clock AM

EXHIBIT
 1

DEC 18 2000
Barbara Meyer
 BARBARA MEYER
 DISTRICT CLERK
 GILLESPIE COUNTY, TEXAS

4. **Causing bodily injury to the other party or to a child of either party.**
5. **Threatening the other party or a child of either party with imminent bodily injury.**
6. **Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.**
7. **Falsifying any writing or record relating to the property of either party.**
8. **Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.**
9. **Damaging or destroying the tangible property of one or both parties, including any document that represents or embodies anything of value.**
10. **Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.**
11. **Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.**
12. **Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.**
13. **Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.**
14. **Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by order of this Court.**
15. **Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.**

16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.
17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent or the parties' children.
19. Canceling, altering, or in any manner affecting the present level of coverage of any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' children.
20. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at either party's residence or in any manner attempting to withdraw any deposits for service in connection with those services.
21. Excluding the other party from the use and enjoyment of the other party's residence.
22. Opening or diverting mail addressed to the other party.
23. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.
24. Taking any action to terminate or limit credit or charge cards in the name of the other party.
25. Entering, operating, or exercising control over the motor vehicle in the possession of the other party.
26. Discontinuing or reducing the withholding for federal income taxes on the other party's wages or salary while this case is pending.
27. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including cancelled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

- 28. Molesting or disturbing the peace of the children or of another party.
- 29. Removing the children beyond the jurisdiction of the Court, acting directly or in concert with others.
- 30. Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled.
- 31. Hiding or secreting the children from the other party or changing the children's current place of abode.

IT IS FURTHER ORDERED that the parties are authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

To engage in acts reasonable and necessary to conduct the party's usual business and occupation.

This restraining order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law. This order shall be binding on the parties; on the parties' agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

IT IS FURTHER ORDERED that the clerk shall issue notice to Respondent, Kenneth Kyle Biedermann, to appear, and Respondent is ORDERED to appear in person, before this Court in the courthouse at 101 West Main St., Fredericksburg, Texas, on Jan 2, 2001 at 9:00 A.M. The purpose of the hearing is to determine whether, while this case is pending: *subject to Jury Doctat*

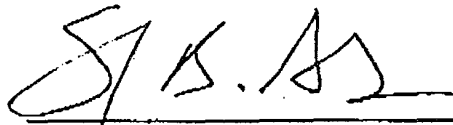
- 1. The preceding temporary restraining order should be made a temporary injunction pending final hearing.
- 2. The additional temporary injunction prayed for should be granted.
- 3. Petitioner should be awarded the exclusive use and possession of the parties'

- residence, furniture, and furnishings at 110 W. Hackberry St., Fredericksburg, Texas while this case is pending, and Respondent should be enjoined from entering or remaining on the premises of the residence, except as authorized by order of this Court.
4. Petitioner should be awarded exclusive use and control of the _____ motor vehicle, and Respondent should be enjoined from entering, operating, or exercising control over it.
 5. Petitioner should be appointed sole managing conservator.
 6. Respondent should be ordered to pay child support, health insurance premiums for coverage on the children, and the children's uninsured medical expenses while this case is pending.
 7. The Court should order the preparation of a social study into the circumstances and condition of the children and of the home of any person requesting managing conservatorship or possession of the children.
 8. Respondent should be appointed temporary possessory conservator.
 9. The Court should order the psychological evaluation of the parties and the children.
 10. The Court should appoint a guardian and attorney ad litem to represent the interests of the children.
 9. The Court should order Respondent to produce copies of income tax returns for tax years 1989 - 1999, a current financial statement, and current pay stubs by a date certain.
 10. The Court should order Respondent to pay reasonable interim attorney's fees and expenses.
 11. The Court should order Respondent to pay estimated income taxes on the due dates as required by the Internal Revenue Service and under the Social Security numbers of both Petitioner and Respondent and to pay any ad valorem taxes as due on the properties of the parties.
 12. The Court should order Respondent to provide a sworn inventory and appraisalment of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the

form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), form 7-1.

13. The Court should order Respondent to produce copies of all the tax information necessary to prepare Petitioner's tax returns for tax year 1999, including tax returns and all supporting schedules for years 1992 - 1998, by a date certain.
14. The Court should order Respondent to participate in an alternative dispute resolution process before trial of this matter.
15. The Court should order Respondent to execute all necessary releases required by Petitioner to obtain any discovery allowed by the Texas Rules of Civil Procedure.
16. The Court should order a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.
17. The Court should make all other and further orders respecting the property and the parties that are pleaded for or that are deemed necessary and equitable and for the safety and welfare of the children.

SIGNED on Dec. 18, 2000 at 12:30 P.M.



JUDGE PRESIDING

LAW OFFICES of JOHN NICHOLS*Chevron Tower***1301 MCKINNEY STREET SUITE 3636****HOUSTON TEXAS 77010****Telephone: (713) 654-0708****Fax: (713) 654-0706****PAMELA K. BERGMAN**

Board Certified-Texas Board of Legal Specialization-
Personal Injury-Civil Trial-Family Law
Member National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext.117

January 02, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Re: *Cause No. 9284; In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children, In the 216 Judicial District of Gillespie County, Texas*

Dear Mrs. Meyer:

Please take the indicated action: **Notice of Reset of Hearing for Temporary Orders**

- File among papers in the above cause.
- File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger.
- A filing fee is enclosed in the amount of \$_____.
- Present to Judge for hearing date and signature.
- Demand for jury.
- By copy hereof, those persons whose names appear below are being notified of this filing..

Very truly yours,

Pamela K. Bergman
For the Firm

PKB:jld

Enclosure

cc: Avian Ann Biedermann
Allen J. (Jody) Halm

No. 9284


IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
AVIAN ANN BIEDERMANN	§	
AND	§	
KENNETH KYLE BIEDERMANN	§	
	§	GILLESPIE COUNTY, T E X A S
AND IN THE INTERESTS OF	§	
KYLA RAE BIEDERMANN,	§	
EMILY LAINE BIEDERMANN,	§	
LOREN NOEL BIEDERMANN AND	§	
DANA TRUE BIEDERMANN, MINOR	§	
CHILDREN	§	216TH JUDICIAL DISTRICT

Notice of Reset of Hearing for Temporary Orders


Please take notice that the Hearing for Temporary Orders has been reset to January 12, 2001, at 9:00 o'clock a.m., in the 216th District Court of Gillespie County, Texas.

Respectfully submitted,

LAW OFFICES OF JOHN NICHOLS



 JOHN NICHOLS
 SBT #14996000



 PAMELA K. BERGMAN
 SBT #00795804
 1301 MCKINNEY, SUITE 3636
 HOUSTON, TEXAS 77010
 713/654-0708
 713/654-0706 FAX

ATTORNEYS FOR PETITIONER

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on January 02, 2001.



Pamela K. Bergman

FILED

Paula Richards Loetz

Invoice

Certified Shorthand Reporter
Vendor ID No. 452-11-4061
P.O. Box 290092
Kerrville, Texas 78029-0092

FILED
BARBARA MEYER
DISTRICT CLERK

Date	Invoice #
1/12/2001	2001012

2001 JAN 16 A 11:38

GILLESPIE COUNTY, TEXAS

BY *Nona Munoz* DEPUTY

Bill To
Gillespie County Ms. Barbara Meyer 204 Courthouse 101 W. Main Street Fredericksburg, Texas 78624-3700

Description	Amount
RE: Court Reporting Services, 216th Judicial District Court of Gillespie County, Texas, sitting in Gillespie County	
Monday, January 8, 2001 - Hon. Charles Sherrill, Presiding No. 9275 - Gordne Pohler, et al v. Gregory Espenhover One-Half Day	100.00
Friday, January 12, 2001 - Hon. Charles Sherrill, Presiding No. 9181 - Marriage of Duecker No. 9244 - In the Interest of Barrientes Child No. 9824 ⁹²⁸⁴ Marriage of Biedermann One-Half Day	100.00
<p><i>Copy To: 1-17-01</i></p> <p><i>Auditor</i></p> <p><i>DC file</i></p> <p><i>Paula</i></p> <p><i>Barbara Meyer</i> DISTRICT CLERK <i>by Nona Munoz, Deputy</i> 1-17-01</p>	
Thank you!	Total \$200.00



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

January 16, 2001

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main Street, Suite 204
Fredericksburg, Texas 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Ms. Meyer:

Please file the enclosed Order of Referral to Mediation in the above-referenced court file. Copies of the Order have been sent to Chris Wallendorf, Pamela Bergman and Allen Halm.

Very truly yours,

Becky
Becky Henderson
Court Coordinator
198th & 216th District Courts

FILED
BARBARA MEYER
DISTRICT CLERK

2001 JAN 18 P 12: 24

GILLESPIE COUNTY, TEXAS

Enclosures

BY *Lona Muna* DEPUTY

CAUSE NO. 9284

FILED
BARBARA MEYER
DISTRICT CLERK

2001 JAN 18 P 12: 24
IN THE DISTRICT COURT
GILLESPIE COUNTY, TEXAS

IN THE MATTER OF)
THE MARRIAGE OF)
)
AVIAN ANN BIEDERMANN)
AND)
KENNETH KYLE BIEDERMANN)
)
AND IN THE INTEREST OF)
KYLA RAE BIEDERMANN,)
EMILY LAINE BIEDERMANN,)
LOREN NOEL BIEDERMANN AND)
DANA TRUE BIEDERMANN,)
MINOR CHILDREN)

BY *Sona Murray* DEPUTY
216TH JUDICIAL DISTRICT

GILLESPIE COUNTY, TEXAS

ORDER OF REFERRAL TO MEDIATION

This case is appropriate for mediation pursuant to Tex. Civ. Prac. & Rem. Code Section 154.0001 et. seq. **CHRIS WALLENDORF**, Attorney at Law in Comfort, Texas, (830) 995-2575, is appointed Mediator in the above case and all counsel are directed to contact Mediator to arrange the logistics of mediation within three business days.

Mediation is a mandatory but non-binding settlement conference, conducted with the assistance of the Mediator. Mediation is private, confidential and privileged from process and discovery. After mediation, the Court will be advised by the Mediator, parties and counsel, only that the case did or did not settle. The Mediator shall not be a witness nor may the Mediator's records be subpoenaed or used as evidence. No subpoenas, citations, writs, or other process shall be served at or near the location of any mediation session, upon any person entering, leaving or attending any mediation session.

Fees for the mediation are to be divided and borne equally by the parties unless agreed otherwise, and shall be paid by the parties directly to the Mediator, and shall be taxed as costs.

Each party and their counsel will be bound by the Rules for Mediation printed on the enclosed document, and shall complete the information forms as are furnished by the Mediator.

Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer with authority to negotiate a settlement. Counsel and parties shall proceed in a good faith effort to try to resolve this case and shall agree upon a mediation date within the next 30 days. If no agreed date can be scheduled within the next 30 days, then the Mediator shall select a date within the next 60 days and all parties shall appear as directed by the Mediator.

Referral to mediation is not a substitute for trial and the case will be tried if not settled.

Signed this 15th day of January, 2001.


CHARLES SHERRILL
Senior Judge

cc: Hon. Chris Wallendorf, Mediator ✓

Hon. Pamela K. Bergman
Attorney at Law ✓
Chevron Tower
1301 McKinney, Suite 3636
Houston, Texas 77010

MAILED
COPIES
1/16/01
BH

Hon. Allen J. Halm ✓
Attorney at Law
307 West Main, Suite 101
Fredericksburg, Texas 78624

RULES FOR MEDIATION

1. **Definition of Mediation.** Mediation is a process under which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose his own judgment on the issues for that of the parties.

2. **Consent to Mediator.** If no written objection to the mediator is received by the Court within ten days of the signing of the Order Of Referral To Mediation, it is deemed that the parties consent to the appointment of the individual named as mediator in their case. The Mediator shall act as an advocate for resolution and shall use his best efforts to assist the parties in reaching a mutually acceptable settlement.

3. **Conditions Precedent to Serving as Mediator.** The Mediator will only serve in cases in which the parties are represented by attorneys. The mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the Mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. In the event that the parties disagree as to whether the Mediator shall serve, the Mediator shall not serve.

4. **Authority of Mediator.** The Mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The Mediator is authorized to conduct joint and separate meetings with the parties and to offer suggestions to assist the parties achieve settlement. If necessary the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the Mediator shall determine.

5. **Commitment to Participate in Good Faith.** While no one is asked to commit to settle their case in advance of mediation, all parties commit to participate in the proceedings in good faith with the intention to settle, if at all possible.

6. **Parties Responsible for Negotiating Their Own Settlement.** The parties understand that the Mediator will not and cannot impose a settlement in their case and agree that they are responsible for negotiating a settlement acceptable to them. The Mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties. The Mediator does not warrant or represent that settlement will result from the mediation process.

7. **Authority of Representatives.** PARTY REPRESENTATIVES MUST HAVE AUTHORITY TO SETTLE AND ALL PERSONS NECESSARY TO THE DECISION TO SETTLE SHALL BE PRESENT. The names and addresses of such persons shall be communicated in writing to all parties and to the Mediator.

8. **Time and Place of Mediation.** The Mediator shall fix the time of each mediation session. The mediation shall be held at the office of the Mediator, or at any other convenient location agreeable to the Mediator and the parties, as the Mediator shall determine.

9. **Identification of Matters in Dispute.** Prior to the first scheduled mediation session, each party shall provide the Mediator and all attorneys of record with an Information Sheet and Request For Mediation on the form provided by the Mediator setting forth its position with regard to the issues that need to be resolved.

At or before the first session, the parties will be expected to produce all information reasonably required for the Mediator to understand the issues presented. The Mediator may require any party to supplement such information.

10. **Discovery.** All discovery shall be abated pending ordered mediation unless leave of Court is obtained for Discovery.

11. **Privacy.** Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the Mediator.

12. **Confidentiality.** Confidential information disclosed to a Mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the Mediator. All records, reports or other documents received by a mediator while serving in that capacity shall be confidential. The Mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. Any party that violates this agreement shall pay all fees and expenses of the Mediator and other parties, including reasonable attorney's fees, incurred in opposing the efforts to compel testimony or records from the Mediator.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceeding: a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; b) admissions made by another party in the course of the mediation proceedings; c) proposals made or views expressed by the Mediator; or d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

13. **No Stenographic Record.** There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.

14. **No Service of Process at or near the site of the Mediation Session.** No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.

15. **Termination of Mediation.** The mediation shall be terminated: a) by the execution of a settlement agreement by the parties; or b) by declaration of the Mediator to the effect that further efforts at mediation are no longer worthwhile.

16. **Exclusion of Liability.** The Mediator is not a necessary or proper party in judicial proceedings relating to the mediation.

Neither Mediator nor any law firm employing Mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

17. **Interpretation and Application of Rules.** The Mediator shall interpret and apply these rules.

18. **Fees and Expenses.** The Mediator's daily fee shall be approved by the Court and paid within ten (10) days of approval. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including fees and expenses of the Mediator, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the parties unless they agree otherwise.



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

January 19, 2001

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main, Room 204
Fredericksburg, Texas 78624

Re: Cause No. 9284
In the Interest of the BIEDERMANN Children

Dear Barbara:

Enclosed is a Order requiring CASE study in the above-referenced matter. Please file the originals and send copies of the Order to all appropriate parties. *√ Nm 1-23-01*

Very truly yours,

A handwritten signature in black ink that reads "Stephen B. Ables".

Stephen B. Ables
216th District Judge

SBA:mfh

Enclosures

FILED
At 10:30 O'clock A M

JAN 22 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

A handwritten signature in black ink that reads "Barbara Meyer".

Allen J. (Jody) Halm
Law Offices of A. J. Halm
307 West Main, Suite 101
Fredericksburg, Texas 78624
(830) 997-6975 FAX (830) 997-9485

12 January 2001

Judge Charles Sherrill
District Judge
216th Judicial District
Kerr County Courthouse
700 Main Street
Kerrville, Texas 78028

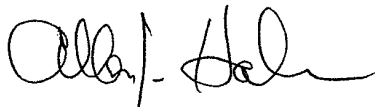
RE: Biedermann v. Biedermann, Cause NO. 9284, Gillespie County, Texas

Dear Judge Sherrill:

As per your direction, enclosed is the order for CASA study in the above referenced case.

A copy of this order has been shared with opposing counsel.

Sincerely,



Allen J. Halm
Attorney at Law

AJH/cwh

CLERK OF DISTRICT COURT
GILLESPIE COUNTY, TEXAS

JAN 22 2001

10:31 O'CLOCK
A M

FILED
At 10:31 O'clock A M

JAN 22 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer

NO. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT

GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

ORDER REQUIRING CASA STUDY

After hearing argument of counsel, IT IS ORDERED that a Court Appointed Special Advocate (CASA) volunteer be assigned to this case. And in the interest of the children, an emergency is declared with direction from this Court for said assigned volunteer to conduct a home study within ten days of this order if possible, but no later than thirty days from this date.

IT IS FURTHER ORDERED that a written report of the home study be filed with this Court by the volunteer and that said report be shared with the attorneys for the parties as shown below:

Pam Bergman ✓ 1-23-01
1301 McKinney, Suite 3636
Houston, Texas 77010

Jody Halm ✓ 1-23-01
307 W. Main, Suite 101
Fredericksburg, Texas 78624

SIGNED this 11th day of January, 2001.

Charles Sherrod
Presiding Judge

FILED
At 10:32 O'clock A M

JAN 22 2001
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Copy Faxed To: Shirley @ CASA 830-896-2309 1/22/01 @ 11:48 A

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

Telephone: (713) 654-0708

Fax: (713) 654-0706

PAMELA K. BERGMAN

Writer's Direct Dial:
(713) 654-0708 Ext.117

January 17, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Please take the indicated action: **RULE 11 AGREEMENT**

- (X) File among papers in the above cause.
- (X) File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger. *JNM 1-22-01*
- () A filing fee is enclosed in the amount of \$_____.
- () Present to Judge for hearing date and signature.
- () Demand for jury.
- (X) By copy hereof, those persons whose names appear below are being notified of this filing.

Very truly yours,

Pamela K. Bergman
Pamela K. Bergman
For the Firm

PKB:cml

Enclosure

cc.w/encls.: Avian Ann Biedermann
Allen J. (Jody) Halm

by permission - JN
* FILED
BARBARA MEYER
DISTRICT CLERK

2001 JAN 22 P 12:11

GILLESPIE COUNTY, TEXAS

BY *Nona Murray*
DEPUTY

FILED
BARBARA MEYER
DISTRICT CLERK

No. 9284

2001 JAN 22 P 12: 12
GILLESPIE COUNTY, TEXAS

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216TH JUDICIAL DISTRICT

BY *Nona Munoz* DEPUTY

Rule 11 Agreement

Pursuant to Rule 11, TEX. R. CIV. P., Petitioner and Respondent, Avian Ann Biedermann and Kenneth Kyle Biedermann, through their respective attorneys of record, agree that the reciprocal temporary restraining order currently in effect (attached as Appendix 1) shall stay in effect throughout the pendency of the case.

Pamela K. Bergman

PAMELA K. BERGMAN
SBT #00795804
1301 McKinney, Suite 3636
Houston, Texas 77010
713/654-0708
713/654-0706 FAX

Attorney for Avian Ann Biedermann

DATE: 1-16-01

Allen J. Halm

ALLEN J. HALM
SBT # 08804350
307 W. Main, Suite 101
Fredericksburg, Texas 78624
830/997-6975
830/997-9485 FAX

Attorney for Kenneth Kyle Biedermann

DATE: 1-17-01

APPENDIX 1

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216 ^J JUDICIAL DISTRICT

**TEMPORARY RESTRAINING ORDER
AND ORDER SETTING HEARING FOR TEMPORARY ORDERS**

The application of Petitioner for temporary restraining order was presented to the Court today.

The children the subject of this suit are Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann.

The Court examined the pleadings and affidavit of Petitioner and finds that Petitioner is entitled to a temporary restraining order.

IT IS THEREFORE ORDERED that the clerk of this Court issue a temporary restraining order restraining Petitioner and Respondent, and Petitioner and Respondent are immediately restrained, from:

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

FILED
At 12:36 O'clock A M

DEC 18 2000
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

4. Causing bodily injury to the other party or to a child of either party.
5. Threatening the other party or a child of either party with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
7. Falsifying any writing or record relating to the property of either party.
8. Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
9. Damaging or destroying the tangible property of one or both parties, including any document that represents or embodies anything of value.
10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.
12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.
13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.
14. Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by order of this Court.
15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.

16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.
17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent or the parties' children.
19. Canceling, altering, or in any manner affecting the present level of coverage of any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' children.
20. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at either party's residence or in any manner attempting to withdraw any deposits for service in connection with those services.
21. Excluding the other party from the use and enjoyment of the other party's residence.
22. Opening or diverting mail addressed to the other party.
23. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.
24. Taking any action to terminate or limit credit or charge cards in the name of the other party.
25. Entering, operating, or exercising control over the motor vehicle in the possession of the other party.
26. Discontinuing or reducing the withholding for federal income taxes on the other party's wages or salary while this case is pending.
27. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including cancelled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

28. Molesting or disturbing the peace of the children or of another party.
29. Removing the children beyond the jurisdiction of the Court, acting directly or in concert with others.
30. Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled.
31. Hiding or secreting the children from the other party or changing the children's current place of abode.

IT IS FURTHER ORDERED that the parties are authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

To engage in acts reasonable and necessary to conduct the party's usual business and occupation.

This restraining order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law. This order shall be binding on the parties; on the parties' agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

IT IS FURTHER ORDERED that the clerk shall issue notice to Respondent, Kenneth Kyle Biedermann, to appear, and Respondent is ORDERED to appear in person, before this Court in the courthouse at 101 West Main St., ~~Fredericksburg~~, Texas, on Jan 2, 2008 at 9:00 A. M. The purpose of the hearing is to determine whether, while this case is pending: *subject to Jury docket*

1. The preceding temporary restraining order should be made a temporary injunction pending final hearing.
2. The additional temporary injunction prayed for should be granted.
3. Petitioner should be awarded the exclusive use and possession of the parties'

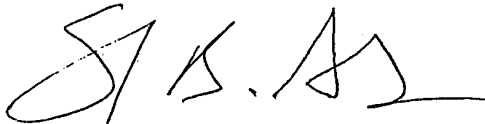
residence, furniture, and furnishings at 110 W. Hackberry St., Fredericksburg, Texas while this case is pending, and Respondent should be enjoined from entering or remaining on the premises of the residence, except as authorized by order of this Court.

4. Petitioner should be awarded exclusive use and control of the _____ motor vehicle, and Respondent should be enjoined from entering, operating, or exercising control over it.
5. Petitioner should be appointed sole managing conservator.
6. Respondent should be ordered to pay child support, health insurance premiums for coverage on the children, and the children's uninsured medical expenses while this case is pending.
7. The Court should order the preparation of a social study into the circumstances and condition of the children and of the home of any person requesting managing conservatorship or possession of the children.
8. Respondent should be appointed temporary possessory conservator.
9. The Court should order the psychological evaluation of the parties and the children.
10. The Court should appoint a guardian and attorney ad litem to represent the interests of the children.
9. The Court should order Respondent to produce copies of income tax returns for tax years 1989 - 1999, a current financial statement, and current pay stubs by a date certain.
10. The Court should order Respondent to pay reasonable interim attorney's fees and expenses.
11. The Court should order Respondent to pay estimated income taxes on the due dates as required by the Internal Revenue Service and under the Social Security numbers of both Petitioner and Respondent and to pay any ad valorem taxes as due on the properties of the parties.
12. The Court should order Respondent to provide a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the

form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), form 7-1.

13. The Court should order Respondent to produce copies of all the tax information necessary to prepare Petitioner's tax returns for tax year 1999, including tax returns and all supporting schedules for years 1992 - 1998, by a date certain.
14. The Court should order Respondent to participate in an alternative dispute resolution process before trial of this matter.
15. The Court should order Respondent to execute all necessary releases required by Petitioner to obtain any discovery allowed by the Texas Rules of Civil Procedure.
16. The Court should order a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.
17. The Court should make all other and further orders respecting the property and the parties that are pleaded for or that are deemed necessary and equitable and for the safety and welfare of the children.

SIGNED on Dec. 18, 2000 at 12:30 P.M.



JUDGE PRESIDING

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT

GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

MOTION FOR ENFORCEMENT AND ORDER TO APPEAR

This Motion for Enforcement of Temporary Orders is brought by KENNETH

FILED
At 9:17 O'clock A M

KYLE BIEDERMANN, Movant.

I.

FEB 5 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Movant, KENNETH KYLE BIEDERMANN is a resident of Fredericksburg, Gillespie County, Texas.

*By Jan Davis
Chief Deputy*

Respondent, AVIAN ANN BIEDERMANN resides at 110 West Hackberry Street, Fredericksburg, Gillespie County, Texas 78624.

Process should be served at that address.

II.

On December 18, 2000, an Original Petition for Divorce with attached Temporary Restraining Order was filed by Avian Ann Biedermann. The Temporary Restraining Order was a mutual restraint upon the actions of both the petitioner and respondent

signed by Presiding Judge Stephen Ables. Hearing on the order was set for January 2, 2001.

In particular, the order of this Court states in relevant part as follows:

IT IS THEREFORE ORDERED that the clerk of this Court issue a temporary restraining order restraining Petitioner and Respondent, and Petitioner and Respondent are immediately restrained from:

12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.

13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.

14. Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by order of this Court.

III.

AVIAN ANN BIEDERMANN has failed to comply with the order described above as follows:

On or about December 28, 2000, ten days after she had obtained the temporary restraining order, AVIAN ANN BIEDERMANN purchased a 1999 Pontiac Grand AM GT, VIN 1G2NW52E3XM813480, from The Boerne Superstore, 30300 IH 10 West, Boerne, Texas 78006. She entered into a retail installment agreement to pay \$21,789.00

in 60 payments of \$363.15. The above action was done without the knowledge or consent of movant.

Movant further alleges that there existed no necessity for this purchase since respondent had the use of another vehicle in good working order.

IV.

Movant requests that Respondent be held in contempt, jailed, and fined for the violation alleged above. Movant believes, based on the conduct of Respondent, that Respondent will continue to fail to comply with the order. Movant requests that Respondent be held in contempt, jailed, and fined for each failure to comply with the temporary orders of this Court from the date of this filing to the date of hearing on this motion.

V.

Movant requests that, if the Court finds that any part of the order sought to be enforced is not specific enough to be enforced by contempt, the Court enter a clarifying order, specify in its clarifying order the duties imposed on Respondent and a reasonable time within which compliance will be required, and grant all other relief permitted by law.

VI.

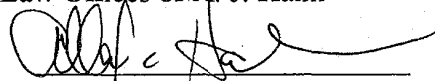
It was necessary to secure the services of ALLEN J. HALM, a licensed attorney, to enforce and protect the rights of KENNETH KYLE BIEDERMANN. Respondent should be ordered to pay a reasonable attorney fee, to be taxed as costs and ordered paid directly to the undersigned attorney. Movant requests that Respondent be ordered to pay costs of court in this proceeding.

Movant prays that Respondent be held in contempt and punished as requested, that the Court clarify any part of its prior order found not to be specific enough to be enforced by contempt, and for attorney's fees and costs.

Respectfully submitted,

The Law Offices of A. J. Halm

By:



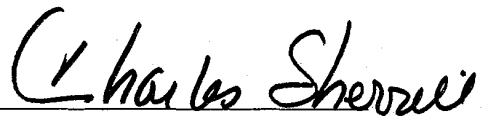
Allen J. Halm
SBOT #08804350

307 W. Main, Suite 101
Fredericksburg, Texas 78624
(830) 997-6975
(830) 997-9485 FAX

ORDER TO APPEAR

Respondent, AVIAN ANN BIEDERMANN, is hereby ORDERED to personally appear and respond to this Motion for Enforcement in 216th Judicial Court in KENDALL COUNTY, Texas, on FEBRUARY 20, 2001, at 9:00 A. M. The purpose of this hearing is to determine whether the relief requested in this motion should be granted.

SIGNED on FEBRUARY 16, 2001.

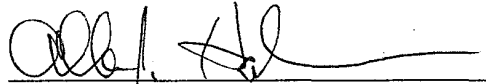

Presiding Judge

CHARLES SHERRILL
SENIOR JUDGE 112th D.C.
SITTING BY ASSIGNMENT

CERTIFICATE OF SERVICE

I certify that a true copy of this Motion for Enforcement and Order to Appear has, on this day, been sent by certified mail to Pam Bergman, 1301 McKinney, Suite 3636, Houston, Texas 77010, attorney of record for petitioner.

SIGNED this 5th day of February, 2001.


Allen J. Halm, Attorney for Respondent

Copy To: 2-6-01
Gody Halm
Pamela Bergman

OFFICE OF THE CLERK
COUNTY CLERK
CLERK OF COURTS

FILED
FEB 6 2001
CLERK

NO. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIDERMAN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIDERMAN, MINOR
CHILDREN

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IN THE DISTRICT COURT

GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

MOTION
FILED
At 10:23 O'clock AM

MOTION TO MODIFY TEMPORARY ORDERS

APR 24 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By Janice Dicks
Chief Deputy

This Motion to Modify Temporary Orders is brought by KENNETH KYLE

BIEDERMANN, Movant.

ORDER → **FILED**
At 11:32 O'clock AM

I.

APR 27 2001

Movant, KENNETH KYLE BIEDERMANN is a resident of Fredericksburg
Gillespie County, Texas.

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By Janice Dicks
Chief Deputy

Respondent, AVIAN ANN BIEDERMANN resides at 110 West Hackberry
Street, Fredericksburg, Gillespie County, Texas 78624.

No service is necessary at this time.

II.

On December 18, 2000, an Original Petition for Divorce with attached Temporary
Restraining Order was filed by Avian Ann Biedermann. The Temporary Restraining
Order was a mutual restraint upon the actions of both the petitioner and respondent

signed by Presiding Judge Stephen Ables. Hearing on the order was set for January 2, 2001.

Mediation was ordered by this Court and mediation was attempted on February 19, 2001. A Mediation Agreement was formulated with the temporary orders to expire on March 23, 2001. This document was read into the Court's record on February 20, 2001.

Another attempt at mediation was made on March 22, 2001, with no agreement being reached. On March 23, 2001, Movant appeared before this Court on his Motion to Enforce the mutual restraining order and during the course of that hearing agreed to extend the temporary orders arising out of the earlier mediation until the agreed court date of May 14-15, 2001, despite there being no setting on those orders. Petitioner's attorneys were directed to prepare the mediation agreement and reduce it to enforceable language. At this time, no such document has been presented.

However, in the interim, by order of this Court, Petitioner's request for a continuance was granted and signed on April 16, 2001. The new date set for trial is now August 15-16, 2001.

III.

Because at the time that KENNETH KYLE BIEDERMANN, Movant, entered into the mediated agreement of February 19, 2001, and the agreed extension on March 23, 2001, he believed that a final resolution was imminent, the circumstances have changed and the continuance granted has led to a need to modify those orders.

IV.

Since February 19, 2001, KENNETH KYLE BIEDERMANN, Movant, has vacated the house and pursuant to the mediation agreement has continued to make the house payment (\$979.00 per month), the home equity loan payment (\$292.00 per month), provided family health insurance through his business (\$435.00 per month), and paid the non-telephone utilities (approximately \$150.00 per month) at the home occupied by respondent. He also provides his wife with \$50.00 per month of gasoline charges at a local filling station where he keeps an open account. He also pays \$200.00 per month as tuition for his children to continue their placement in the Heritage School. His net monthly income is only \$1780.00. Not including the family health insurance, tuition and gasoline, this amount of support to maintain the household represents 79.8% of his disposable income. KENNETH KYLE BIEDERMANN agreed to such a high level of support because he was assured that a trial date had been set as part of the mediation agreement and that such support would be adjusted after trial. When the opposing party requested and received a continuance, the circumstances materially changed and that change requires the modification of the Temporary Orders.

Movant requests that the support provided in the Temporary Orders be terminated for the following reasons:

1. AVIAN ANN BIEDERMANN reports income of \$1940.25 per month as a self-employed hair stylist. (See CASA Report, page 9)
2. AVIAN ANN BIEDERMANN purchased an automobile and incurred debt that was unnecessary. (See Motion to Enforce)

3. AVIAN ANN BIEDERMANN agreed to delay the agreed upon court date of May 14-15, 2001.
4. AVIAN ANN BIEDERMANN has not maintained the home and yard. Movant requests that he be allowed to move back into the home, make necessary repairs, maintain the premises, and prepare the home to be marketed during the prime selling season.
5. AVIAN ANN BIEDERMANN has had exclusive possession of the home, furnishings and personal property since February 19, 2001. She has refused to allow KENNETH KYLE BIEDERMANN to access his possessions or to even enter the house. Movant requests that the this Court order that KENNETH KYLE BIEDERMANN have access to the house so that an inventory of personal property can be made, so that he can get necessary financial records and so that he can get items such as tools that are necessary to his business. In the alternative, KENNETH KYLE BIEDERMANN requests that he be awarded exclusive possession of the house until date of trial.

V.

Movant requests that the present orders relating to possession of the children and access of the children be modified because they have become unworkable and are no longer in the best interest of the children. The children will soon be out of school and will have more time to spend with their parents. The current Temporary Order allows KENNETH KYLE BIDERMANN visitation beginning at 5 p.m. on Saturday and returning the children to school on Monday.

The order is silent on telephonic contact, but to this point, AVIAN ANN BIEDERMANN has denied KENNETH KYLE BIEDERMANN reasonable telephonic contact with his children and they with him.

The order is silent on extended visitation times for vacation trips. AVIAN ANN BIEDERMANN has refused to allow KENNETH KYLE BIEDERMANN to take the children from June 1 through June 18 on the usual and customary Florida trip with his parents. Because the family drives there, Avian's agreement for a one week trip is unreasonable and not in the children's best interest.

Movant requests this Court to modify its Temporary Orders as follows:

1. KENNETH KYLE BIEDERMANN is to have weekly visitation with the children from Friday at 5 p.m. until Monday at 8 a.m. and on Tuesday evenings from 6 p.m. until 8:30 p.m. unless mutually agreed to by the parties.
2. The children will be allowed to initiate one phone call per day at anytime to the parent not in possession of the children. Likewise, the parent not in possession may initiate one phone call to the children between the hours of 7 p.m. and 8:30 p.m. No phone call should last more than fifteen minutes and neither parent is to monitor, record, or inhibit the phone conversations.
3. The children will be allowed to travel with their father and their paternal grandparents to Florida during the period of June 1 through June 18, 2001.

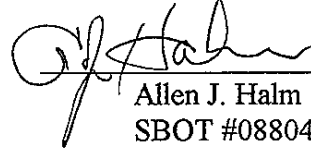
VI.

Movant prays the Court grant the Motion to Modify Temporary Orders.

Respectfully submitted,

The Law Offices of A. J. Halm

By:



Allen J. Halm

SBOT #08804350

340 Emerald Loop

Fredericksburg, Texas 78624

(830) 997-6975

(830) 997-9485 FAX

1* 9:45 O'clock A M

Cause No. 9284

MAY 14 2001
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
AVIAN ANN BIEDERMANN	§	
AND	§	
KENNETH KYLE BIEDERMANN	§	
	§	GILLESPIE COUNTY, T E X A S
AND IN THE INTERESTS OF	§	
KYLA RAE BIEDERMANN,	§	
EMILY LAINE BIEDERMANN,	§	
LOREN NOEL BIEDERMANN AND	§	
DANA TRUE BIEDERMANN, MINOR	§	
CHILDREN	§	216TH JUDICIAL DISTRICT

Agreed Temporary Orders Pursuant to
"Mediation Agreement on Temporary Orders Until March 22, 2001"

On March 23, 2001, the Court considered Petitioner's Motion for Temporary Orders and made the following orders for a Temporary Order.

Appearances

Petitioner, Avian Ann Biedermann, appeared in person and through attorneys of record, John Nichols and Pamela K. Bergman, and announced ready.

Respondent, Kenneth Kyle Biedermann, appeared in person and through attorney of record, Allen J. Halm, and announced ready.

Jurisdiction

The Court, after examining the record and hearing the evidence and argument of counsel, finds that all necessary prerequisites of the law have been legally satisfied and that the Court has jurisdiction of this case and of all the parties.

Findings

The Court finds that the parties had previously entered into a mediated settlement agreement for temporary orders entitled "Mediation Agreement on Temporary Orders Until March 22, 2001," in a document separate from this Temporary Order. The Court approved the agreement and ordered the parties to continue to abide by the

terms of the mediated settlement agreement for temporary orders through the pendency of this suit or until further Order of this Court. This Temporary Order is stipulated to represent a merger of the "*Mediation Agreement on Temporary Orders Until March 22, 2001.*" To the extent there exist any differences between the said agreement and this Temporary Order, this Temporary Order shall control in all instances.

A copy of the "*Mediation Agreement on Temporary Orders Until March 22, 2001*" is attached hereto as Appendix 1.

Children

The Court finds that the following orders for the safety and welfare of the children, Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann, are in the best interest of the children.

Minimizing Disruption

IT IS ORDERED that to minimize disruption of the children's education, daily routine, and association with friends, Avian Ann Biedermann and Kenneth Kyle Biedermann shall:

1. Refrain from engaging in conduct designed to alienate the children against the other parent;
2. Abide by the "Parent's Goals, Agreements and Guidelines Relating to the Children," attached hereto as Appendix 2.

Temporary Possession Order

- (a) Mutual Agreement or Specified Terms for Possession

IT IS ORDERED that the temporary conservators shall have possession of the children at times mutually agreed to in advance by the parties, and, in the absence of mutual agreement, it is ORDERED that the conservators shall have possession of the children under the specified terms set out in this Temporary Possession Order.

- (b) Except as otherwise explicitly provided in this Temporary Possession Order, during the pendency of this case, Kenneth Kyle Biedermann shall have the right to possession of the children as follows:

1. Saturdays--On each Saturday of the month beginning at 5:00 P.M. on Saturday and ending when school begins on the immediately following Monday.

Avian Ann Biedermann shall have the right of possession of the children at all other times not specifically designated in this Temporary Possession Order for Kenneth Kyle Biedermann.

This concludes the Temporary Possession Order.

The periods of possession ordered above apply to each child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

Temporary Family Support

IT IS ORDERED that Kenneth Kyle Biedermann shall pay temporary family support to Avian Ann Biedermann by discharging the following debts and obligations, until further order of this Court:

1. Kenneth Kyle Biedermann is ORDERED to pay the monthly mortgage payment to Greenpoint Mortgage Funding, Inc. in the amount of \$928.00.
2. Kenneth Kyle Biedermann is ORDERED to pay the monthly home equity payment to Bank One, Texas, N.A. in an approximate amount of \$292.14 per month.
3. Kenneth Kyle Biedermann is ORDERED to pay Avian Ann Biedermann's monthly gas, electric and water bills at 110 W. Hackberry, Fredericksburg, Texas 78624.
- 4.. Kenneth Kyle Biedermann is ORDERED to pay no more than \$50.00 per month for Avian Ann Biedermann's vehicle at Jeks.

Temporary Injunction as to Children

The Court finds that, based on the public policy considerations stated in section 153.001 of the Texas Family Code, it is in the best interests of the children that the following temporary injunction be issued and related orders be entered.

IT IS ORDERED that Avian Ann Biedermann and Kenneth Kyle Biedermann and their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise are temporarily enjoined from:

1. Molesting or disturbing the peace of the children or of any other party.
2. Removing the children beyond the jurisdiction of the Court, acting directly or in concert with others.

3. Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled.

4. Hiding or secreting the children from the other party or changing the children's current place of abode.

Information Regarding Parties and Children

Information regarding each party is as follows:

Name: Avian Ann Biedermann
Social Security number: 451-37-2272
Driver's license number/issuing state: 00705712 Texas
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624
Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: Self-employed
Address of employment: 110 West Hackberry
Fredericksburg, Texas 78624
Work telephone number: 830/997-2622

Name: Kenneth Kyle Biedermann
Social Security number: 101-54-5263
Driver's license number/issuing state: 02811412
Current residence address: 411 East College
Fredericksburg, Texas
Mailing address: Same
Home telephone number: 830/997-7611.
Name of employer: B L & H, Inc.
Address of employment: 1102 E. Main, Suite B
Fredericksburg, Texas 78624
Work telephone number: 830 997-7611

Name: Kyla Rae Biedermann
Social Security number: 643-28-5526
Driver's license number/issuing state: None
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624
Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: None.

Address of employment: None.
Work telephone number: None.

Name: Emily Laine Biedermann
Social Security number: 644-36-1424
Driver's license number/issuing state: None
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624

Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: None.
Address of employment: None.
Work telephone number: None.

Name: Loren Noel Biedermann
Social Security number: 641-44-9258
Driver's license number/issuing state: None
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624

Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: None.

Address of employment: None.
Work telephone number: None.

Name: Dana True Biedermann
Social Security number: 633-52-8790
Driver's license number/issuing state: None
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624

Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: None.
Address of employment: None.
Work telephone number: None.

Required Notices

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO

GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Central File Maintenance, P.O. Box 12048, Austin, Texas 78711-2048.

Warnings to Parties

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY

A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

Property and Parties

The Court finds that the following orders respecting the property and parties are necessary and equitable.

Temporary Award of Property

Pursuant to the "*Mediated Agreement on Temporary Orders Until March 22, 2001*", Avian Ann Biedermann was awarded the exclusive and private use and possession of the following property during the pendency of this suit:

1. The homestead located at 110 West Hackberry, Fredericksburg, Texas 78624, until March 23, 2001. Kyle Kenneth Biedermann was ~~Ordered~~ ^{agreed} to vacate said premises on or before February 21, 2001.
 KB KKH

Health Insurance

IT IS ORDERED that Kenneth Kyle Biedermann shall maintain Avian Ann Biedermann and the parties' children as insured beneficiaries on his health insurance policy while this case is pending.

Temporary Injunction

The Court finds that the parties have agreed that the existing restraining order shall remain in effect and to the entry of the following temporary injunctions while this case is pending.

The temporary injunction granted below shall be effective immediately and shall be binding on Avian Ann Biedermann and Kenneth Kyle Biedermann; on their agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party or a family member or child of either party in person, by telephone, or in writing to take unlawful action against any person.

3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.
4. Causing bodily injury to the other party or to a family member or child of either party.
5. Threatening the other party or a family member or child of either party with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
7. Falsifying any writing or record relating to the property of either party.
8. Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
9. Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.
10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.
12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.
13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.
14. Spending any sum of cash in the other party's possession or subject to the other party's control for any purpose, except as specifically authorized by order of this Court.

15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.
16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.
17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent or the parties' children.
19. Canceling, altering, failing to renew or pay premium, or in any manner affecting the present level of coverage of any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' children.
20. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at or in any manner attempting to withdraw any deposits for service in connection with those services.
21. Excluding the other party from the use and enjoyment of the other party's residence.
22. Opening or diverting mail addressed to the other party.
23. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.
24. Taking any action to terminate or limit credit or charge cards in the name of the other party.
25. Entering, operating, or exercising control over the motor vehicle in the possession of the other party.
26. Discontinuing or reducing the withholding for federal income taxes on the other party's wages or salary while this case is pending.

27. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including cancelled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

IT IS ORDERED that Avian Ann Biedermann is specifically authorized:

1. To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.
2. To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.
3. To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.
4. To engage in acts reasonable and necessary to conduct Petitioner's usual business and occupation.

IT IS ORDERED that Kenneth Kyle Biedermann is specifically authorized:

1. To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.
2. To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.
3. To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.
4. To engage in acts reasonable and necessary to conduct Respondent's usual business and occupation.

Additional Temporary Injunction

The Court finds that the parties have agreed to the entry of the following additional temporary injunction while this case is pending:

The temporary injunction granted below shall be effective immediately and shall be binding on Avian Ann Biedermann and Kenneth Kyle Biedermann; on their agents, servants, employees, and attorneys; and on those persons in active concert or

participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

1. Discussing this case, or any related issue, including child support or financial issues and any agreement or conflict between the parties, with any child or within the child's sphere of awareness or permitting any child to remain in the presence of any person doing the same.
2. Engaging in conduct designed to alienate the children against the other parent.

Service of Writ

Petitioner and Respondent waive issuance and service of the writ of injunction, by stipulation or as evidenced by the signatures below. IT IS ORDERED that Petitioner and Respondent shall be deemed to be duly served with the writ of injunction.

Termination of Mediation and Discovery Resumed

The Court finds that the agreement of the parties, as set out in the "*Mediation Agreement on Temporary Orders Until March 22, 2001*", concerning the mutual exchange of informal discovery is no longer in effect.

The Court also finds that the parties have fully complied with this Court's *Order of Referral to Mediation and Rules of Mediation* entered on January 15, 2001 by their attendance at a mediation session with Chris Wallendorf on March 22, 2001.

The Court also finds that the parties were not able to reach a settlement agreement and that by declaration of the Mediator, Chris Wallendorf, further efforts at mediation are no longer worthwhile.

IT IS THEREFORE ORDERED by the Court that mediation shall be terminated and all discovery previously abated shall resume in accordance with the Texas Rules of Civil Procedure for requesting and responding to discovery.

Enforcement Proceedings and Agreement for Prior Settings

The Court finds that the agreement of the parties, as set out in the "*Mediation Agreement on Temporary Orders Until March 22, 2001*", concerning settings for temporary orders and trial are no longer in effect.

The Court also finds that Avian Ann Biedermann and Kenneth Kyle Biedermann have agreed that any enforcement proceedings brought by either party in this cause of action shall be heard at the time of the trial in this cause of action.

IT IS ORDERED THEREFORE by the Court that any motions for enforcement filed in this cause of action by either party shall be heard concurrently at the time of the trial in this case.

Duration

These Temporary Orders shall continue in force until the signing of the Final Decree of Divorce or until further order of this Court.

SIGNED on May 17, 2001

Charles Storrey
JUDGE PRESIDING

APPROVED AS TO SUBSTANCE:

Avian Ann Biedermann
Avian Ann Biedermann

Kenneth K. Biedermann
Kenneth Kyle Biedermann

APPROVED AS TO FORM:

John Nichols, Sr.
John Nichols, Sr.
SBT # 14996000
Pamela K. Bergman
Pamela K. Bergman
The Law Offices of John Nichols
1301 McKinney, Suite 3636
Houston, Texas 77010
713/654-0708
713/654-0706 FAX

Allen J. Halm
Allen J. (Jody) Halm
SBT # 08804350
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340 Emerald Loop
Fredericksburg, Texas 78624
830/997-6975
830/997-9485 FAX

Attorney for Kenneth Kyle Biedermann

Attorneys for Avian Ann Biedermann

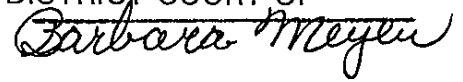
Copy of Page 1 and Page 12 (4 copies)
to atty Bergman. She will give the parties
and atty Halm their copies. 5-14-01
lem

MAY 14 2001

No. 9284

BARBARA MEYER
DISTRICT CLERK

IN THE DISTRICT COURT OF
GILLESPIE COUNTY, TEXAS



IN THE MATTER OF §
THE MARRIAGE OF §
§
AVIAN ANN BIEDERMANN §
AND §
KENNETH KYLE BIEDERMANN §
§
AND IN THE INTERESTS OF §
KYL A RAE BIEDERMANN, §
EMILY LAINE BIEDERMANN, §
LOREN NOEL BIEDERMANN AND §
DANA TRUE BIEDERMANN, MINOR §
CHILDREN §

GILLESPIE COUNTY, T E X A S

216TH JUDICIAL DISTRICT

Petitioner's First Amended Petition for Divorce

Discovery Level

Discovery in this case is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

Parties

This suit is brought by Avian Anne Biedermann, Petitioner, who is thirty-nine (39) years of age and resides at 110 W. Hackberry St., Fredericksburg, Texas and against Kenneth Kyle Biedermann, Respondent, is forty-one (41) years of age and resides at 110 W. Hackberry St., Fredericksburg, Texas and also against BL & H, Inc. d/b/a Biedermann's Ace Hardware. Co-Respondent is a corporation organized under the laws of the State of Texas.

Domicile

Petitioner has been a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding ninety-day period.

Service

No service is necessary on Kenneth Kyle Biedermann as he has appeared and answered suit.

B L & H, Inc. d/b/a Biedermann's Ace Hardware, Co-Respondent, may be served with citation through B L & H, Inc.'s registered agent, Kenneth Kyle Biedermann, at 1101 E. Main Street, Fredericksburg, Texas 78624.

Protective Order Statement

No protective order under Title 4 of the Texas Family Code is in effect, and no application for a protective order is pending with regard to the parties to this suit.

Dates of Marriage and Separation

The parties were married on or about April 22, 1989 and have ceased to live together as husband and wife.

Grounds for Divorce

The marriage has become insupportable because of discord or conflict of personalities between Petitioner and Respondent that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

Respondent is guilty of cruel treatment toward Petitioner of a nature that renders further living together insupportable.

Children of the Marriage

Petitioner and Respondent are parents of the following children of this marriage who are not under the continuing jurisdiction of any other court:

Name: Kyla Rae Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: January 26, 1992
Present address: 110 W. Hackberry St., Fredericksburg, Texas

Name: Emily Laine Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: July 15, 1993
Present address: 110 W. Hackberry St., Fredericksburg, Texas

Name: Loren Noel Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas

Birth date: December 20, 1994
Present address: 110 W. Hackberry St., Fredericksburg, Texas

Name: Dana True Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: March 22, 1996
Present address: 110 W. Hackberry St., Fredericksburg, Texas

There are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships affecting the children the subject of this suit.

Information required by section 152.09 of the Texas Family Code has been provided attached to Petitioner's Original Petition for Divorce.

No property of consequence is owned or possessed by the children the subject of this suit.

Petitioner believes that Petitioner and Respondent will enter into a written agreement containing provisions for conservatorship and support of the children. If such an agreement is not made, Petitioner requests the Court to make orders for conservatorship and support of the children.

The appointment of Petitioner and Respondent as joint managing conservators would not be in the best interest of the children. Petitioner, on final hearing, should be appointed sole managing conservator, with all the rights and duties of a parent sole managing conservator, and Respondent should be ordered to make payments for the support of the children in the manner specified by the Court. Petitioner requests that the payments for the support of the children survive the death of Respondent and become the obligation of Respondent's estate.

In the alternative, Petitioner and Respondent, on final hearing, should be appointed joint managing conservators, with all the rights and duties of a parent conservator.

Petitioner should be designated as the conservator who has the exclusive right to determine the primary residence of the children. Respondent should be ordered to make payments for the support of the children in the manner specified by the Court. Petitioner requests that the payments for the support of the children survive the death of Respondent and become the obligation of the Respondent's estate.

The residence of the children should be restricted to Gillespie County and any county contiguous to it.

Division of Community Property

Petitioner believes Petitioner and Respondent will enter into an agreement for the division of their estate. If such an agreement is made, Petitioner requests the Court to approve the agreement and divide their estate in a manner consistent with the agreement. If such an agreement is not made, Petitioner requests the Court to divide their estate in a manner that the Court deems just and right, as provided by law.

Petitioner should be awarded a disproportionate share of the parties' estate for the following reasons, including but not limited to:

- a. fault in the breakup of the marriage;
- b. fraud on the community;
- c. benefits the innocent spouse may have derived from the continuation of the marriage;
- d. disparity of earning power of the spouses and their ability to support themselves;
- e. the spouse to whom conservatorship of the children is granted;
- f. needs of the children of the marriage;
- g. education and future employability of the spouses;
- h. tax consequences of the division of property;
- i. earning power, business opportunities, capacities, and abilities of the spouses;
- j. need for future support;
- k. nature of the property involved in the division;
- l. increase in value of separate property through community efforts by time, talent, labor, and effort;
- m. reimbursement;
- n. expected inheritance of a spouse;
- o. attorney's fees to be paid;

- p. the size and nature of the separate estates of the spouses;
- q. actual fraud committed by a spouse;
- r. constructive fraud committed by a spouse.

Separate Property

Petitioner owns certain separate property that is not part of the community estate of the parties, and Petitioner requests the Court to confirm that separate property as Petitioner's separate property and estate.

Reimbursement

Petitioner requests the Court to reimburse the community estate for funds or assets expended by the community estate to benefit or enhance Respondent's separate estate. The community estate has not been adequately compensated for or benefitted from the expenditure of those funds or assets, and a failure by the Court to allow reimbursement to the community estate will result in an unjust enrichment of Respondent's separate estate at the expense of the community estate.

Petitioner requests the Court to reimburse the community estate for the value of community time, talent, toil, and effort expended by Respondent to benefit or enhance Respondent's separate estate. The use by Respondent of community time, talent, toil, and effort was beyond what was reasonably necessary to maintain, manage, and preserve Respondent's separate estate, and for which the community estate was not adequately compensated. As a result, the failure to allow reimbursement to the community estate will result in the unjust enrichment of Respondent's separate estate.

Equitable Interest

Petitioner requests the Court to award to the community estate an equitable interest equal to the net amount of the enhancement in value of Respondent's separate property due to the financial contribution expended by the community estate to benefit or enhance that separate estate.

Petitioner requests the Court to award to the community estate an equitable interest in Respondent's separate property as a result of the use of community property to discharge all or part of a debt on separate property owned by Respondent.

Postdivorce Maintenance

Petitioner requests the Court to order that Petitioner be paid postdivorce maintenance for a reasonable period in accordance with chapter 8 of the Texas Family Code. Petitioner requests the Court to issue an order to garnish Respondent's wages for this maintenance.

Request for Receiver and Declare Note a Nullity

Petitioner owns an interest in B L & H, Inc., doing business as "Biedermann's Ace Hardware" in Fredericksburg, Texas. Petitioner believes and alleges that Respondent, who also owns an interest in B L & H, Inc., has caused or allowed the gross receipts of the business to decline during the most serious period of domestic unrest between Petitioner and Respondent. Petitioner will not realize the maximum value of her interest in the business unless a Receiver is appointed to take control of the business and either bring in new management or rehabilitate the business to its optimum condition and sell it to a bona fide purchaser for value in an arms length transaction.

Additionally, Petitioner and Respondent executed a promissory note to Respondent's parents with no intention by the parents that the note be repaid. For purposes of putting a value on the business, Petitioner requests this Court to place a \$0 value on the note and/or find that enforcement of the note is barred by estoppel and the applicable statute of limitations.

Request for Permanent Injunction

Petitioner requests the Court, after trial on the merits, to grant the following permanent injunctions:

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party or a family member of either party in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.
4. Causing bodily injury to the other party or to a family member of either party.
5. Threatening the other party or a family member of either party with imminent bodily injury.

6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the other party.
7. Engaging in conduct designed to alienate the children against the other parent or the other parent's family members.
8. Discussing this divorce case, the outcome of this case, or any related issue, including any settlement agreement or future litigation of related issues, with the children except to explain any changes affecting the time they spend with each parent.
9. Discussing this divorce case, the outcome of this case, or any related issue, including any settlement agreement or future litigation of related issues within the children's spheres of awareness, or allowing the children to remain in the presence of anyone doing the same.
10. Discussing any issue related to the scheduling of possession periods, including any agreement or conflict between the parents with the children or within the children's spheres of awareness, or allowing the children to remain in the presence of anyone doing the same.
11. Discussing financial matters as they pertain to the children, including but not limited to child support issues, and any agreement or conflict between the parents with the children or within the children's spheres of awareness, or allowing the children to remain in the presence of anyone doing the same.

Attorney's Fees and Expenses

It was necessary for Petitioner to secure the services of John Nichols and Pamela K. Bergman, licensed attorneys, to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the children, judgment for attorneys' fees and expenses through trial and appeal should be granted against Respondent and in favor of Petitioner for the use and benefit of Petitioner's attorneys; or, in the alternative, Petitioner requests that reasonable attorney's fees and expenses through trial and appeal be taxed as costs and be ordered paid directly to Petitioner's attorneys, who may enforce the order for fees in the attorneys' own name.

Statement on Alternative Dispute Resolution

Petitioner has signed a statement on alternative dispute resolution, has previously been filed and was attached as Exhibit 1 to Petitioner's Original Petition.

Additional Causes of Action

Petitioner alleges additional causes of action and as continuing torts against Respondent as follows:

A.1. Causes of Action for Assault

a. Cause of Action for Intentional, Knowing, or Reckless Bodily Injury

- On or about February 20, 2001, in Gillespie County, Texas, Respondent intentionally and knowingly or recklessly caused bodily injury to Petitioner by slamming her arm in the front door of the marital residence and thereafter forcefully pushing her away from the same door in an attempt to hold Petitioner in the house against her will.
- On or about February 21, 2001, in Gillespie County, Texas, Respondent intentionally and knowingly or recklessly caused bodily injury to Petitioner by forcefully pushing her into a bathroom in the marital residence, hitting her body with the door and thereafter wedging his foot in the door to keep her from closing the door to get away from him.

b. Cause of Action for Threat of Imminent Bodily Injury

- On or about November 23, 2000, in Gillespie County, Texas, Respondent threatened to cause bodily injury to Petitioner by forcefully throwing a large boot directly at her while screaming, "I can't believe you are so fucking stupid."
- On or about February 20, 2001, in Gillespie County, Texas, Respondent intentionally and knowingly threatened Petitioner with bodily injury by holding her in the home against her will while screaming, "You will stay here and talk to me or else."
- On or about February 21, 2001, Respondent intentionally and knowingly threatened Petitioner with bodily injury by holding her in a room against her will forcing her to experience his temper tantrum and listen to his threats against her.

c. Cause of Action for Offensive or Provocative Physical Contact

- On or about February 20, 2001, in Gillespie County, Texas, Respondent intentionally or knowingly caused physical contact with Petitioner by forcefully pushing her and physically detaining her when Respondent knew or should have reasonably believed that Petitioner would regard such contact as offensive or provocative.
- On or about February 21, 2001, in Gillespie County, Texas, Respondent intentionally and knowingly cause physical contact with Petitioner by forcefully pushing her and physically detaining her when Respondent knew or should have reasonably believed that Petitioner would regard such contact as offensive or provocative.

A.2. *Cause of Action for Intentional Infliction of Emotional Distress*

In Gillespie County, Texas, in the presence of the parties' four daughters and in public, Respondent has intentionally or recklessly engaged in a pattern of extreme and outrageous behavior that has caused Petitioner emotional distress and humiliation by repeatedly and continually:

- a. Becoming enraged and screaming profanity at Petitioner;
- b. Calling Petitioner vile, demeaning and degrading names;
- c. Attacking Petitioner's credibility and cursing Petitioner;
- d. Demeaning and ridiculing Petitioner's mother and grandmother telling the children they are "white trash;"
- e. Criticizing and undermining Petitioner's parental authority;
- f. Alienating and brainwashing the children with cruel or untrue statements about Petitioner;
- g. Taunting Petitioner that police or legal authorities will not stand in the way or protect her from his conduct.
- h. Soliciting the active participation of his family members to alienate the children from Petitioner;

- i. Threatening to take Petitioner's children, business, home and vehicle from her unless she remains married to him;
- j. Holding Petitioner against her will forcing her to experience his ranting and threats;
- k. Forcefully preventing Petitioner from meeting clients in a timely manner, thereby threatening her business and reputation.

A.3. *Actual Damages for Resulting Personal Injuries*

As a direct and proximate result of Respondent's wrongful conduct alleged above, Petitioner has suffered certain damages including:

- a. Reasonable and necessary medical expenses in the past;
- b. Reasonable and necessary medical expenses that in reasonable probability will be incurred in the future;
- c. Loss of earnings in the past;
- d. Physical pain, suffering, and mental anguish in the past.

Petitioner additionally brings this suit for these damages, which exceed the minimum judicial limits of this Court.

A.4. *Exemplary Damages*

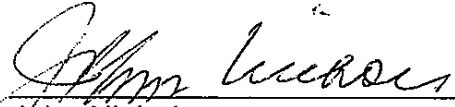
The conduct committed by Respondent against Petitioner is the type of conduct evidencing actual malice on Respondent's part that allows the imposition of exemplary damages. Petitioner additionally brings this suit for these damages, which exceeds the minimal jurisdictional limits of this Court.

B.1. *Cause of Action Alleging Third-Party Corporation to Be Alter Ego of Respondent.*

Petitioner will show that the identity of the corporation and the individual Respondent are in substance one and the same. Co-Respondent corporation is only the alter ego of the individual Respondent, acting solely as a conduit for the performance of the individual Respondent's business through mismanagement of corporate finances and payment of personal expenses with corporate funds, personal use of company automobiles, domination of board of directors by family members, and failure to maintain corporate records or file corporate returns.

Respectfully submitted,

LAW OFFICE OF JOHN NICHOLS



John Nichols

SBT # 14996000



Pamela K. Bergman

SBT #00795804

1301 McKinney, Suite 3636
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713/654-0708
713/654-0706 FAX

Attorneys for Avian Ann Biedermann

Certificate of Service

I certify that a true copy of the above was served on each attorney or party in accordance with the Texas Rules of Civil Procedure on this the _____ day of _____, 2001.




John Nichols or Pamela K. Bergman

Attorneys for Avian Ann Biedermann

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COMMERCIAL SERVICE
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REPORTER'S RECORD

TRIAL COURT CAUSE NO. 9284

IN THE MATTER OF	X	IN THE DISTRICT COURT
THE MARRIAGE OF	X	
AVIAN ANN BIEDERMANN	X	
AND	X	
KENNETH KYLE BIEDERMANN	X	216TH JUDICIAL DISTRICT
	X	
	X	
AND IN THE INTEREST OF	X	
KYLA RAE BIEDERMANN,	X	
EMILY LAINE BIEDERMANN,	X	
LOREN NOEL BIEDERMANN,	X	
AND DANA TRUE BIEDERMANN,	X	
MINOR CHILDREN	X	GILLESPIE COUNTY, TEXAS

* * * * *

TEMPORARY ORDERS

* * * * *

On Monday, the 14th day of May, 2001,
 from 9:31 o'clock a.m. to 12:46 o'clock p.m., the
 following proceedings came on to be heard in the
 above-entitled and numbered cause; before the
 Honorable Charles Sherrill, Senior Judge Presiding,
 held in Fredericksburg, Gillespie County, Texas:

FILED
 At 10:08 O'clock A M

JUN 1 2001
Barbara Meyer
 BARBARA MEYER
 DISTRICT CLERK

Proceedings reported by computerized
 stenotype machine, valid if it bears my raised seal.

Cindy E. Snider
 CSR No. 2739

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APPEARANCES

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SBOT No. 14996000
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For the Petitioner, Avian Ann Biedermann

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(830) 997-9485 - Fax

For the Respondent, Kenneth Kyle Biedermann

* * * * *

I N D E X

<u>MAY 14, 2001</u>	<u>Page</u>
Proceedings	3
Announcements	3
Court Reporter's Certificate	8
Key Word Index	

1 (In open court:)

2 THE COURT: Madam Reporter, if you
3 would reflect counsel is present, and what is our
4 status on this matter?

5 MS. BERGMAN: First of all, we have an
6 entry of our temporary orders that are pursuant to
7 our mediation agreement. They're agreed temporary
8 orders. Everyone has signed them. We would like to
9 enter those with the Court today.

10 THE COURT: All right.

11 MS. BERGMAN: Then we, in fact, have
12 two motions before the Court, our Motion for
13 Additional Temporary Orders and Respondent's Motion
14 to Modify Temporary Orders.

15 THE COURT: All right.

16 MS. BERGMAN: We are at this time 90
17 days out from a trial on the merits of this case. We
18 are entering agreed temporary orders that just had
19 proposed changes by Respondent. We agreed with those
20 changes. Everyone signed this order and we believe
21 that instead of going over lengthy testimony over the
22 issues that should be tried on the merits of this
23 case, that our time here today would probably be
24 better spent exchanging documents for discovery,
25 getting together, agreeing on dates for deposing

CINDY E. SNIDER
OFFICIAL COURT REPORTER
P. O. BOX 293251
KERRVILLE, TEXAS 78029-3251 (830) 257-5063

1 parties and non-parties that we all have already
2 advised that we need.

3 THE COURT: Do you have a trial
4 setting date at this time?

5 MS. BERGMAN: Yes, if I can remind the
6 Court, that we had a telephonic hearing on our Motion
7 for Continuance of this case on April 9th, I believe,
8 and the Court did grant our continuance. After
9 getting several dates from the Court Coordinator, Ms.
10 Henderson, we conferred with Mr. Halm and gave him
11 several dates to choose from and he chose April -
12 excuse me, August 14th and 15th, I think, either that
13 or the 15th and 16th.

14 THE COURT: All right. All right,
15 Mr. Halm, do you have any comments?

16 MR. HALM: Yes, Your Honor, I do. The
17 agreed orders that have been presented to this Court
18 arose out of a mediation agreement on March the -
19 February the 20 - February the 29th. As part of that
20 agreement, the items that were listed, plus the date
21 certain for trial, which was today, we also signed in
22 that Article 10, which was a non-revocation of any of
23 the items, when Petitioner requested a continuance
24 that materially changed the inducement Mr. Biedermann
25 had for entering into mediation agreement because of

1 continuance of the support and visitation.

2 In addition, Your Honor, not only has
3 there been a material change because of the
4 continuance, but the agreed orders are silent on such
5 important items as summer visitation time for the
6 children, extended visitation, telephonic contact,
7 and those are issues that we would like addressed in
8 a hearing today.

9 THE COURT: I'll tell you what the
10 Court is going to do: It signs the original agreed
11 order and I suggest that you go in and see if you
12 can't work out the matters here about telephonic
13 visitation, summer visitation, and so forth, instead
14 of having a full - because I would suggest you take a
15 recess and do that. Thank you.

16 MS. BERGMAN: Appreciate your time,
17 Your Honor.

18 MR. HALM: Are you suggesting we take
19 an hour, two hours, Your Honor?

20 THE COURT: Well, it's 9:30. I'll
21 say I'll give you until noon.

22 MR. HALM: We'll work diligently, Your
23 Honor.

24 THE COURT: All right, fine, thank
25 you. If you work something out, let us know.

1 (Hearing recessed from 9:36 o'clock
2 a.m. to 12:40 o'clock p.m.)

3 MS. BERGMAN: We have discussed some
4 things, basically going by an additional temporary
5 order that we prepared, a proposed temporary order.
6 We have eliminated some things. We have added some
7 things. If you want me to read our agreements into
8 the record at this time, I'll do that, Your Honor.

9 THE COURT: In other words, have you
10 agreed to this?

11 MS. BERGMAN: We have agreed to
12 certain things. We have agreed to table a couple of
13 issues.

14 THE COURT: Okay, then we'll make it a
15 Rule 11 Agreement; if you will then read it into the
16 record then.

17 MS. BERGMAN: All right. We have
18 agreed - the parties have agreed through their
19 attorneys that they will file their inventory and
20 appraisements, sworn inventory and appraisements, by
21 July 15th of this year.

22 They have agreed that on May 20th, at
23 or about 4:30 p.m., Mr. Biedermann will do a video
24 walk-through of the residence at 110 Hackberry Street
25 here in Fredericksburg, Texas.

1 Our office, the office - Law Offices
2 of John Nichols, will call Dr. Jack Ferrell in San
3 Antonio and set up appointments for custody
4 evaluation, the parties and the children.

5 The parties have agreed that they will
6 give each other reasonable telephone access with the
7 children and that the children may have reasonable
8 telephone access with their parents - daily access,
9 excuse me.

10 THE COURT: Daily, all right.

11 MS. BERGMAN: We will conduct
12 depositions on June 15th, Kyle Biedermann at 9:00
13 a.m. and Avian Biedermann at 2:00 p.m.; on June 16th
14 Kenneth Biedermann at 9:00 a.m. and Libby Biedermann
15 at 2:00 p.m. Thereafter, Mr. Halm will take the
16 deposition of Terra Stark that same day. That will
17 be 4:00 p.m. Kyle Biedermann will guarantee that
18 his parents will be back in Fredericksburg on June
19 15th, Friday, to appear for depositions the next day.

20 .

21 The child Kyla Biedermann's day camp
22 has been postponed until June 18th through the 21st
23 and the payment of that day camp will be paid by her
24 father, Kyle Biedermann.

25 MR. BIEDERMANN: I didn't agree to

1 that.

2 MS. BERGMAN: Didn't? By selling this
3 air conditioner and making up the difference?

4 MR. BIEDERMANN: If we sell the air
5 conditioner, fine. I said if all this stuff happens,
6 but we don't even have the buyer anymore. That buyer
7 is gone.

8 MR. NICHOLS: If it doesn't get paid,
9 I'll pay it.

10 THE COURT: And we'll decide the court
11 costs in the end.

12 MR. NICHOLS: Thank you.

13 MS. BERGMAN: Kyle Biedermann will
14 have the children for an extended summer visitation
15 from the time school is out on May 31st, 2001, until
16 June 15th when his - when the paternal grandparents
17 will return the children to Avian Biedermann at a
18 time that Kyle Biedermann will notify Avian
19 Biedermann at a reasonable time, giving her
20 reasonable notice.

21 Avian Biedermann will have the
22 children for an extended summer visitation in the
23 latter part of the summer for approximately two
24 weeks, also at a time that we will have to schedule
25 at a later date. She's not sure of the time.

1 Possession and access will remain the
2 same, other than the extended summer visitations,
3 throughout the pendency of the divorce according to
4 the mediated settlement agreement, and the parties
5 have agreed to shelf the issue of the temporary
6 family support that is being paid by Mr. Biedermann
7 at this time, pending a hearing, if we cannot agree
8 within the next - what - couple of weeks, three, two
9 or three weeks?

10 MR. NICHOLS: There's also one other
11 issue that we have agreed to try to resolve outside
12 the court. We're looking for kind of a safe harbor
13 place for someone for both of these parties to talk
14 to, to kind of open up a line of communication.
15 We're going to check through a few sources to see if
16 we can't find somebody like that, with the
17 understanding that this person would - communication
18 to that person would be privileged by either one of
19 these things and that person wouldn't be hauled down
20 here to court; thereby leaving both of these people
21 free to say everything and anything they want with
22 them, so that this person can work toward opening up
23 a line of communication between them. That's another
24 thing we're going to try to resolve.

25 THE COURT: All right, I appreciate

1 that, counsel.

2 MR. NICHOLS: All right, I believe
3 that gets our agreement.

4 THE COURT: All right, then this is
5 the agreement you have worked out this morning?

6 MR. HALM: That is correct, Your
7 Honor.

8 THE COURT: The Court will consider
9 that a Rule 11 Agreement and proceed on it. I do
10 thank y'all so much. Have a good day.

11 MR. NICHOLS: Thank you, Judge. Thank
12 you for your time.

13 MS. BERGMAN: Your Honor, should I
14 reduce that to a Rule 11 Agreement signed by the
15 attorneys to file with the Court?

16 THE COURT: That would probably be
17 better.

18 MS. BERGMAN: Thank you, I will do
19 that.

20 THE COURT: Thank you. I appreciate
21 it.

22 * * * * *

23 (Hearing concluded at 12:46 o'clock
24 p.m.)

25

1 STATE OF TEXAS X
 2 COUNTY OF GILLESPIE X

3 I, Cindy E. Snider, Official Court Reporter
 4 in and for the 216th Judicial District Court of
 5 Gillespie County, State of Texas, do hereby certify
 6 that the above and foregoing contains a true and
 7 correct transcription of all portions of evidence and
 8 other proceedings requested by counsel for the
 9 parties in writing to be included in this volume of
 10 the Reporter's Record, in the above-styled
 11 and numbered cause, all of which occurred in open
 12 court or in chambers and were reported by me.

13 I further certify that this Reporter's
 14 Record of the proceedings truly and correctly
 15 reflects the exhibits, if any, offered by the
 16 respective parties.

17 I further certify that the total cost for
 18 the preparation of this Reporter's Record is \$ 51.⁰⁰
 19 and was paid by M. John Nichols, Sr.

20 Witness my hand and seal on this, the
 21 23rd day of May, 2001.

22 Cindy E. Snider
 23 Cindy E. Snider
 24 Official Court Reporter
 25 P.O. Box 293251
 Kerrville, Texas 78029-3251
 (830) 257-5063
 CSR No. 2739
 Expires: 12/31/01

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 KERRVILLE, TEXAS 78029-3251 (830) 257-5063

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REPORTER'S RECORD

TRIAL COURT CAUSE NO. 9284

IN THE MATTER OF	X	IN THE DISTRICT COURT
THE MARRIAGE OF	X	
	X	
AVIAN ANN BIEDERMANN	X	
AND	X	
KENNETH KYLE BIEDERMANN	X	216TH JUDICIAL DISTRICT
	X	
	X	
AND IN THE INTEREST OF	X	
KYLA RAE BIEDERMANN,	X	
EMILY LAINE BIEDERMANN,	X	
LOREN NOEL BIEDERMANN,	X	
AND DANA TRUE BIEDERMANN,	X	
MINOR CHILDREN	X	GILLESPIE COUNTY, TEXAS

* * * * *

KEY WORD INDEX

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-§-	7th [4] 2:8 16:14 16:18 33:24	5:16 5:17	bench [3] 11:19 12:25 13:5
\$ [1] 35:18		allowed [1] 20:3	beneficial [2] 21:13 21:15
\$10 [1] 23:16	-8-	along [1] 20:9	Berg [16] 1:5 3:10 6:1 6:2 6:20 7:6 7:6 7:10 7:12 29:4 29:5 29:9 29:11 29:12 29:20 36:5
\$5 [1] 23:16	830 [3] 2:3 35:24 35:24	amend [1] 33:14	Bergs [1] 29:7
---	87 [1] 13:22	amount [2] 15:10 23:6	between [2] 9:7 15:3
-numbered [1] 35:11	896-1984 [1] 35:24	analysis [1] 3:17	big [2] 3:4 19:15
-0-		announce [1] 4:17	Bill [5] 1:3 2:2 3:9 19:16 36:3
00-430-A [3] 1:2	-9-	Announcements [1] 2:16	bills [1] 28:24
3:8 36:2	9086 [3] 19:10 20:6 20:11	answer [1] 11:24	bit [1] 15:1
-1-		anyway [2] 19:15 32:18	blank [2] 22:17 22:20 blanks [2] 22:21 22:24
11:00 [1] 1:11	-A-	APPEARANCES [1] 2:1	books [1] 34:6
11:35 [2] 1:11 34:14	a.m [3] 1:11 1:11 34:14	appreciate [1] 34:4	bottom [1] 15:5
12 [1] 4:18	abated [3] 10:17	April [3] 1:10 2:14 16:12	Box [2] 2:2 35:23
12/31/02 [1] 35:25	10:18 10:20	area [1] 13:13	Brief [1] 30:18
14362500 [1] 2:7	abatement [5] 9:10 10:17 10:24 13:23 30:23	Arnold [1] 6:1	bring [1] 15:19
1493 [2] 1:25 35:25	abide [1] 17:20	arrangements [1] 26:19	bringing [1] 8:25
15 [2] 23:17 23:20	able [1] 21:22	asks [1] 25:1	brother [1] 30:6
-2-	above [1] 35:6	assert [5] 9:7 19:25 20:2 20:3 21:22	Bush [1] 23:22
2001 [3] 1:11 2:14 35:21	above-entitled [1] 1:13	20:2 20:3 21:22	buy [1] 20:20
216th [3] 1:4 35:5 36:4	above-styled [1] 35:11	asserting [2] 9:9 13:24	-C-
225-5600 [1] 2:9	Abstract [1] 7:17	assertion [1] 9:2	calendar [4] 12:21 16:5 23:12 24:8
25 [1] 20:5	abused [2] 8:22 8:22	asset [1] 21:21	calls [1] 27:6
257-1208 [1] 35:24	acceptable [1] 24:25	assets [4] 21:13 21:15 21:19 22:1	card [1] 13:2
27 [1] 2:14	according [1] 16:7	assigned [2] 10:2 18:5	care [2] 23:11 26:17
27th [4] 1:10 16:9 16:10 16:11	act [3] 7:24 7:25 8:1	Attorney [1] 2:6	carefully [1] 5:12
28th [1] 16:9	acting [2] 4:6 35:4	August [9] 12:3 12:6 12:12 12:13 12:14 12:16 12:18 22:21 23:8	case [22] 4:10 4:18 8:15 9:17 9:23 10:15 11:7 14:1 15:17 15:21 15:25 16:1 16:4 16:19 16:20 18:4 18:6 18:21 21:9 26:23 28:3 32:2
290092 [1] 35:23	action [4] 6:3 10:3 15:16 20:2	Austin [5] 2:8 5:23 7:9 25:4 25:5	case's [1] 32:10
294450 [1] 2:2	address [3] 5:2 15:25 27:23	authority [15] 4:14 4:15 4:20 5:1 10:8 10:23 25:11 25:25 26:13 28:1 28:8 28:24 32:14 33:1 33:8	causes [1] 20:2
-3-	addressed [1] 6:21	authorized [1] 28:16	Century [1] 7:10
3 [2] 2:15 2:16	adjourned [1] 34:14	available [1] 23:8	certain [1] 6:21
30-day [1] 16:12	administratively [2] 20:15 21:11	aware [1] 8:17	certainly [3] 17:3 21:22 22:3
35 [1] 2:17	adverse [2] 5:14	away [1] 33:15	Certificate [1] 2:17
36 [1] 2:18	advised [1] 20:16		Certified [2] 35:3 35:23
367-3038 [1] 2:3	again [2] 15:2 26:14	-B-	certify [3] 35:6 35:14 35:17
-4-	against [4] 3:9 21:9 5:23 10:4	Baptist [1] 3:3	chambers [1] 35:12
448-9483 [1] 13:6	agents [1] 8:13	Barton [3] 14:19 14:21 14:23	changed [1] 32:10
480-8963 [1] 2:9	agree [1] 25:2	basis [1] 18:2	chase [1] 7:19
-5-	agreed [2] 24:18 24:20	bears [1] 1:23	check [1] 12:9
512 [3] 2:9 2:9 13:12	agrees [1] 32:24	become [1] 21:25	
-7-	ahead [5] 4:21 6:17 22:19 24:3 26:24	becomes [1] 8:4	
711 [1] 2:8	ain't [1] 14:13	beforehand [1] 19:18	
78029-0092 [1] 35:24	allege [1] 5:4	beginning [1] 19:7	
78029-4450 [1] 2:3	alleged [2] 4:24 5:1		
78701 [1] 2:8	alleging [3] 5:12		

choose [1] 17:15	10:8 10:12 12:9	dates [2] 12:7 22:17	done [4] 4:21 7:16
chose [1] 6:3	35:2 35:5 36:6	days [9] 11:8 12:16	9:8 11:18
church [1] 3:3	course [7] 6:2 6:3	16:8 16:13 17:1	door [1] 23:23
civil [2] 15:15 24:9	7:25 12:18 13:11	17:4 22:13 33:21	down [6] 10:10 10:11
clear [2] 20:4 27:20	21:17 31:16	33:23	10:19 14:25 15:1
clearly [1] 28:24	court [131] 1:2	days' [1] 4:16	20:17
clerk [1] 22:20	1:3 2:17 3:1	deadline [1] 33:20	duly [1] 28:16
clients [2] 5:4 5:9	3:2 3:8 3:13	deadlines [1] 17:20	during [2] 6:2
close [1] 23:22	3:23 4:5 4:11	deal [3] 9:3 19:15	6:23
closed [1] 23:23	4:24 5:6 5:10	20:11	duty [1] 3:22
code [1] 13:13	6:5 6:8 6:11	decide [1] 32:17	
cold [1] 17:22	6:14 6:17 7:19	decided [3] 13:25	-E-
commensurate [1] 18:4	8:7 8:18 9:5	31:6 31:7	E [5] 1:3 2:2
commitments [2] 17:5	9:14 9:16 9:19	defend [1] 14:1	2:13 3:9 36:3
17:19	10:1 10:7 10:14	Defendant [1] 10:11	easier [2] 22:25 25:5
communicate [2] 25:6	10:22 11:5 11:13	Defendants [5] 2:11	effect [1] 6:23
25:6	11:17 11:24 12:6	3:14 29:16 29:17	either [3] 4:5 24:5
company [1] 20:22	12:8 12:17 12:22	35:19	31:3
computerized [1] 1:23	13:6 13:16 13:19	DEFENDANTS' [1] 1:8	enable [1] 32:17
concern [2] 25:25	13:24 14:4 14:7	defending [1] 28:25	enter [3] 33:22 33:22
32:12	14:11 14:17 14:19	Delaware [1] 7:23	34:2
conference [1] 26:7	14:22 14:25 15:7	delay [1] 30:18	entitled [2] 4:16
confident [1] 15:22	15:21 15:24 16:7	demand [2] 23:14	17:14
conflict [13] 4:25	16:11 16:16 16:25	Den [7] 1:5 3:10	entity [4] 5:19 7:23
5:1 5:5 5:13	17:7 17:12 18:1	6:1 6:1 6:20	8:5 8:12
5:18 7:20 8:4	18:11 18:15 18:18	7:6 7:6 7:9	estate [1] 20:25
8:8 8:11 8:20	19:2 19:9 19:13	7:12 29:4 29:5	everybody [2] 19:20
9:7 25:3 25:14	19:19 20:8 20:19	29:7 29:9 29:11	31:11
contact [3] 24:17	21:1 21:3 21:6	29:12 29:20 36:5	evidence [5] 7:12
24:20 27:1	21:18 21:25 22:3	deny [2] 16:21 31:17	8:2 8:16 31:16
contains [1] 35:7	22:8 22:15 22:19	deposition [1] 7:7	35:8
contemporaneous [1] 7:3	22:23 23:5 23:11	depositions [3] 5:25	evidentiary [1] 28:13
contemporaneously [1] 6:25	23:15 23:18 23:21	6:4 31:25	ex [1] 13:8
Continuance [1] 25:1	24:5 24:6 24:22	Deputy [1] 35:4	exactly [1] 27:4
continue [1] 25:2	24:24 25:13 25:16	despite [1] 17:13	exceptions [14] 1:8
continued [1] 7:8	25:19 26:9 26:14	development [1] 20:22	3:19 13:17 13:20
contrary [1] 18:21	26:18 27:5 27:9	different [2] 15:14	15:9 16:3 16:21
convenience [2] 23:9	27:21 27:25 28:7	difficult [1] 20:11	18:13 22:13 32:5
32:23	28:17 28:21 29:3	discovery [10] 6:2	32:9 32:10 33:2
coordinate [1] 26:14	29:7 29:15 29:19	6:20 9:2 9:4	33:13
coordinator [4] 12:10	29:23 30:8 30:11	20:17 22:10 26:5	Excuse [1] 6:5
24:24 25:7 26:14	30:15 30:22 31:1	26:6 26:7 31:10	excused [1] 30:14
coordinators [1] 24:7	31:6 31:8 31:15	Discussion [1] 30:4	exhibits [1] 35:16
copies [1] 6:24	31:19 31:23 32:8	dismissed [1] 31:12	expense [2] 31:10
copy [3] 15:25 15:25	32:15 32:22 33:4	disposed [1] 31:24	31:25
24:4	33:6 33:9 33:13	dispute [1] 21:21	experience [2] 8:6
corporate [1] 22:1	33:18 33:21 34:1	dissolved [2] 20:16	24:19
corporation [7] 19:8	34:6 34:11 35:4	21:11	Expires [1] 35:25
19:10 20:2 20:15	35:5 35:12 36:2	distributed [1] 21:20	explained [1] 19:18
20:20 21:10 21:19	court's [3] 5:20	District [5] 1:3	extension [2] 17:25
corporations [1] 8:6	23:9 24:8	1:4 35:5 36:3	18:2
correct [4] 8:3	courthouse [1] 23:23	36:4	extra [1] 31:24
11:10 13:9 35:7	courtroom [3] 3:4	docket [5] 11:10 12:23	-F-
correctly [1] 35:15	26:15 26:17	18:5 24:11 24:12	fact [2] 8:17 17:13
cost [1] 35:17	cover [2] 16:6 16:17	documents [4] 6:21	factual [3] 5:18
counsel [1] 35:9	cruel [1] 17:9	6:25 7:8 7:13	8:16 16:23
County [13] 1:6	CSR [2] 1:25 35:25	doesn't [6] 3:23	factually [1] 8:9
1:15 4:11 4:12	cut [2] 7:19 17:17	3:25 8:23 9:22	fair [1] 17:18
5:22 6:19 10:2	cutoff [1] 26:7	13:7 24:20	falls [1] 16:14
	-D-	Don [1] 1:14	falsely [1] 8:2
	D [1] 2:13		
	d/b/a [1] 7:10		
	damages [1] 18:20		
	date [5] 7:14 11:2		
	22:21 24:15 25:3		

far [2] 28:17 29:10	Governor [1] 23:22	initial [2] 5:22 6:18	land [2] 20:21 20:21
fax [17] 2:9 7:1 7:1 7:9 7:11 7:14 7:16 7:17 8:9 13:3 13:7 27:7 27:13 27:21 27:24 30:7 35:24	grand [1] 16:22	instead [2] 7:17	Last [1] 23:19
faxed [2] 6:24 7:13	grant [3] 15:11 18:3 18:22	intend [1] 31:2	latter [1] 12:17
faxes [1] 7:4	granted [2] 22:13 32:9	interest [5] 5:18 20:1 21:13 21:15 21:22	law [8] 2:6 2:7 15:14 15:23 17:9 18:20 33:10 34:2
fee [7] 11:3 11:9 11:14 11:18 11:21 12:23 24:2	granting [1] 16:3	interests [1] 20:24	lawsuit [7] 5:22 5:24 6:23 8:24 10:16 10:18 28:25
fees [1] 23:15	great [1] 3:17	Internal [1] 17:6	lawsuits [1] 6:6
Fidelity [1] 7:17	grounds [1] 5:4	interrupt [2] 31:1 31:2	lawyer [11] 4:19 7:21 8:8 8:11 9:7 10:23 17:10 17:14 17:16 23:1 26:23
field [1] 17:9	guess [4] 12:1 15:9 26:11 28:18	investment [1] 20:25	lawyers [2] 14:4 18:3
fifteen [5] 11:8 17:4 22:13 23:18 33:21	-H-	involved [1] 28:14	learned [1] 20:17
figure [2] 20:12 22:9	half [3] 12:14 12:18 23:10	issue [1] 22:4	least [1] 7:13
file [6] 11:14 11:18 11:20 15:9 25:1 28:22	hand [1] 35:20	issues [1] 10:16	leave [1] 22:18
filed [8] 4:14 5:21 5:23 6:6 10:3 26:2 30:25 33:5	handier [1] 12:25	-J-	left [1] 15:2
files [2] 11:9 24:2	he'd [1] 23:22	Jr [3] 1:3 3:9 36:3	legal [5] 5:18 7:23 7:25 8:5 8:11
fill [1] 22:21	hear [7] 25:20 26:16 26:20 28:2 28:8 31:13 32:1	judge [6] 1:14 10:2 14:9 14:13 28:4 32:4	less [2] 15:4 15:6
final [1] 32:6	heard [4] 1:12 4:1 13:17 14:3	judges [1] 18:6	lessons [1] 33:10
fine [3] 17:4 30:9 31:14	hearing [6] 3:19 3:22 25:20 26:12 28:13 34:14	judgment [1] 32:6	letter [4] 16:6 16:17 24:4 27:18
first [9] 6:19 9:3 12:15 12:16 14:2 18:12 23:7 23:10 25:10	held [1] 1:14	Judicial [3] 1:4 35:5 36:4	limited [4] 8:22 9:7 10:4 29:14
following [1] 1:12	Henderson [1] 24:6	June [1] 16:12	litigation [1] 21:21
forego [1] 10:24	hereby [1] 35:6	jurisdiction [2] 10:2 10:9	live [4] 14:19 25:4 25:5
foregoing [1] 35:7	hill [2] 15:2 15:5	jury [20] 11:3 11:3 11:9 11:13 11:14 11:17 11:18 11:21 12:9 12:22 12:23 19:14 23:14 23:15 24:2 24:3 24:9 24:13 24:25 26:16	locally [1] 18:6
forfeited [1] 20:4	Hills [2] 14:20 14:21		Loetz [4] 1:24 3:6 35:3 35:22
formally [1] 4:17	himself [1] 19:13	-K-	lollygag [1] 18:7
former [1] 23:21	hire [1] 17:15	Kay [1] 27:1	look [6] 12:20 16:19 26:6 33:9 33:9 34:6
formerly [1] 22:1	hired [1] 26:22	Kerr [12] 1:6 1:15 4:11 5:22 6:8 6:13 6:19 10:2 12:9 35:2 35:5 36:6	machinations [1] 31:10
forthcoming [1] 26:1	hold [2] 20:21 26:12	Kerrville [6] 1:15 2:3 6:25 7:15 7:18 35:24	machine [2] 1:23 27:7
fortunate [1] 15:6	holders [1] 21:13	Key [2] 2:18 36:8	mail [3] 15:25 15:25 16:5
forum [1] 8:23	home [1] 30:6	kind [2] 12:12 14:14	mailing [1] 27:22
forward [2] 26:5 28:1	Honor [14] 3:12 4:4 9:2 9:11 9:18 11:12 13:14 13:15 14:16 29:22 30:5 30:19 34:5 34:10	knowing [1] 20:10	maintain [1] 24:7
free [1] 26:15	Honorable [1] 1:14	known [1] 20:14	malicious [3] 15:15 18:19 19:3
front [1] 3:4	house [1] 14:11	knows [1] 19:20	Management [2] 7:10 7:11
funny [1] 12:12	-I-	-L-	manner [2] 8:1 8:1
future [1] 26:13	idea [2] 12:8 24:8	L [1] 3:10	material [1] 16:20
-G-	illegal [1] 8:1	L.P [4] 1:5 3:9 5:19 36:5	matter [2] 8:20 9:3
general [1] 28:23	Illinois [2] 20:16 20:20	lady [1] 24:6	may [11] 5:13 12:20 16:14 17:24 18:9 27:1 30:14 32:4 32:18 33:24 35:21
gentlemen [2] 3:15 30:12	included [1] 35:9	Lakeway [2] 14:15	McKay [96] 1:3
given [2] 21:8 24:15	incorrect [1] 8:9		
good [7] 15:15 16:21 32:11 32:11 32:18 32:19 33:14	indeed [1] 7:13		
Gool [10] 1:6 3:10 5:25 6:19 12:4 29:4 29:8 29:12 30:1 36:6	Index [2] 2:18 36:8		
	individually [2] 21:16 21:17		
	individuals [3] 10:4 29:4 29:13		
	informally [1] 25:1		

2:2	3:9	3:10	30:20		Offices [1]	2:7	pay [2]	11:3	23:15		
3:21	4:14	5:7	Morgan [1]	1:14	Official [1]	35:4	paying [1]		28:23		
5:16	5:17	6:7	motion [18]	3:20	officially [1]	4:8	peaceful [1]		15:3		
6:10	6:13	6:16	4:6	4:14	4:18	old [1]	14:12	peak [1]	15:4		
6:18	7:22	8:10	4:25	8:24	10:25	once [5]	18:5	20:3	pending [6]	5:24	
8:25	9:20	9:21	13:23	15:15	25:1	24:2	24:10	24:12	6:15	9:15	9:23
10:6	10:13	10:21	26:12	28:1	28:8	one [24]	6:8	6:8	10:7	32:13	
11:4	11:15	11:23	28:22	30:20	32:13	6:11	6:13	6:14	people [7]	4:16	8:21
12:20	12:22	12:24	32:17	33:1		7:8	7:13	9:24	14:5	15:3	15:4
13:15	13:21	14:2	motions [2]	5:11		10:19	10:19	10:19	15:6	28:14	
14:6	14:9	15:6	26:8			17:15	18:25	19:1	perceive [1]		7:21
16:23	17:3	17:5	Movant's [1]	3:22		19:6	20:24	23:19	percent [1]		20:5
17:7	17:11	17:24	move [2]	3:3	4:12	25:9	25:9	26:9	period [2]	24:9	32:5
18:9	18:12	18:16	moving [1]	18:4		26:10	29:9	31:3	permission [2]		5:20
18:24	19:12	19:16	Ms [2]	3:6	24:6	32:22			28:5		
19:17	19:22	19:24				ones [3]	18:18	19:2	person [2]		8:3
20:13	20:23	21:2				19:3			28:16		
21:4	21:7	22:2				open [3]	3:1	23:24	persons [3]		7:24
22:6	23:3	23:7				35:12			7:25	8:12	
23:13	23:17	23:19				operations [1]	20:24		place [2]	9:24	26:15
23:25	24:4	24:19				opportunity [3]	16:4		places [1]	21:4	
25:9	25:14	25:17				16:19	21:8		Plaintiff [2]		2:4
25:22	27:8	27:11				order [13]	9:1	9:3	10:10		
27:15	27:17	27:22				16:2	16:5	22:12	plea [4]	9:9	10:17
28:3	28:12	29:9				22:16	22:24	23:5	10:24	30:23	
29:21	30:5	30:13				24:11	24:14	26:10	pled [3]	15:13	32:15
30:17	30:19	30:23				33:22	33:23		32:16		
31:21	32:3	32:12				original [1]	20:20		pleading [4]		8:19
32:20	32:25	33:5				otherwise [1]	16:22		15:12	22:7	32:16
33:7	33:12	33:17				ought [1]	10:18		pleadings [5]		3:16
33:19	33:25	34:4				outset [1]	17:8		19:14	27:11	27:14
34:9	36:3					owned [2]	20:3	21:16	33:14		
McKay's [1]	15:24					owner [1]	21:25		point [5]	9:1	18:9
mean [2]	5:6	25:4				ownership [1]	20:1		21:7	25:22	32:20
meaningful [1]	9:2					owns [2]	20:10	20:11	poor [1]	14:12	
memorized [1]	13:4								portions [1]		35:8
met [1]	28:22								position [2]		21:12
middle [1]	15:3								31:5		
might [1]	8:4								possible [1]		30:6
minimize [1]	23:6								posts [1]	12:22	
mistaken [1]	19:17								prefer [2]	28:5	31:4
Monday [2]	16:15								prejudice [2]		18:17
16:17									19:1		
month [2]	12:12	16:12							preparation [1]		35:18
Moore [66]	2:6								prepare [1]		26:12
2:7	3:11	3:12							prepared [7]		13:22
3:13	4:4	4:8							15:8	15:11	26:21
4:13	5:3	5:8							27:25	28:2	29:1
8:16	9:10	9:11							present [2]		5:25
9:15	9:17	11:7							22:3		
11:11	11:22	12:1							President [1]		23:21
12:5	12:7	12:14							Presiding [1]		1:14
12:24	13:14	13:18							pretrial [2]		26:7
14:15	14:18	14:21							28:9		
14:24	15:19	15:22							pretty [1]	3:4	
16:10	16:15	17:4							previous [4]		5:21
19:6	19:17	19:23							6:22	20:14	20:18
20:9	21:24	22:9							pro [2]	2:4	3:11
22:16	22:22	23:9							problem [2]		20:9
24:1	24:16	25:8							33:8		
25:12	26:21	27:13							problems [1]		28:15
27:16	27:19	28:11							procedure [1]		24:16
28:20	29:6	29:11									
29:17	29:25	30:2									
30:10	30:14	30:24									
31:4	31:7	31:14									
31:18	33:24										
Moore's [2]	25:23										

34:9	34:12		18:23	18:24	19:15	world [1]	18:4	
they've [2]		24:15	22:11	24:17	24:22	worry [2]	19:19	19:20
28:23			31:19	33:6	33:16	write [4]	13:4	27:3
three [3]	16:13	21:9	unless [4]	15:14	18:20	27:5	27:6	
21:14			32:23	34:1		-X-		
through [5]		7:24	up [9]	3:3	8:21	X [18]	1:3	1:3
13:8	19:25	20:1	10:24	12:24	13:1	1:4	1:4	1:5
31:9			25:23	26:19	28:9	1:5	1:6	2:13
Thursday [1]		1:10	31:12			35:1	35:1	35:2
title [1]	21:20		urge [2]	31:15	31:16	36:3	36:3	36:4
TL [6]	1:5	3:9	urging [1]		4:25	36:4	36:5	36:5
5:19	28:23	29:13	used [4]	14:7	22:24	36:6		
36:5			23:16	23:24		-Y-		
TLP [13]	5:19	5:21	-V-			y'all [1]	3:15	
5:24	6:3	6:6	vacation [1]		12:15	year [1]	28:24	
7:22	8:8	8:11	vale [1]	15:3		yet [3]	25:11	29:21
8:13	8:21	9:7	valid [1]	1:23		31:6		
21:8	28:16		Van [17]	1:5	3:10	yourself [1]		19:21
today [16]	3:18	4:21	6:1	6:1	6:20			
5:2	9:11	11:9	7:6	7:6	7:9			
11:20	13:17	15:20	7:12	29:4	29:5			
16:8	16:8	18:8	29:7	29:9	29:11			
25:20	26:22	29:1	29:12	29:19	36:5			
29:24	33:23		variety [1]		20:23			
together [1]		14:23	venue [5]	10:25	13:23			
too [2]	13:3	13:10	26:4	30:21	32:10			
took [1]	5:24		view [1]	19:24				
top [1]	15:4		visiting [1]		14:13			
total [1]	35:17		volume [1]		35:10			
transcription [1]		35:7	VS [2]	1:4	36:4			
transfer [6]		3:20	-W-					
4:7	13:23	30:20	W [1]	2:8				
32:18	32:22		wait [1]	28:7				
transmission [2]		7:9	waiting [2]		26:3			
7:11			26:4					
Travis [5]	4:12	6:9	waived [1]		3:25			
6:14	10:8	10:11	walking [1]		13:1			
treat [1]	17:16		wander [1]		14:14			
trial [13]	1:2	4:1	wants [5]	10:24	11:2			
4:2	9:19	9:24	13:25	13:25	24:25			
10:25	11:2	11:17	wayside [1]		9:13			
11:19	22:17	24:13	week [2]	24:9	24:25			
31:25	36:2		weeks [1]	12:9				
tried [4]	4:10	10:19	wherever [1]		28:18			
10:19	11:22		whole [3]	9:1	28:6			
tries [1]	28:20		31:10					
true [1]	35:7		wide [2]	20:23	23:24			
truly [1]	35:15		willing [1]		12:2			
truthful [1]		9:4	wind-down [1]		21:12			
truthfully [1]		8:14	wipe [1]	11:20				
try [8]	9:14	9:16	withdrawing [1]		4:6			
9:17	12:18	13:7	withdrawn [1]		4:9			
14:7	22:9	22:24	within [1]	28:18				
trying [1]	4:12		Witness [1]		35:20			
turn [2]	15:1	15:2	Word [2]	2:18	36:8			
two [3]	6:6	29:7	words [4]	11:8	22:23			
29:13			31:23	32:8				
-U-			worked [1]		14:8			
under [2]	11:7	17:17						
understand [16]	3:24							
8:18	8:19	10:1						
10:10	11:16	17:21						

COPY¹

REPORTER'S RECORD

TRIAL COURT CAUSE NO. 9284

3	IN THE MATTER OF	X	IN THE DISTRICT COURT
	THE MARRIAGE OF	X	
4		X	
	AVIAN ANN BIEDERMANN	X	
5	AND	X	
	KENNETH KYLE BIEDERMANN	X	216TH JUDICIAL DISTRICT
6		X	
		X	
7	AND IN THE INTEREST OF	X	
	KYLA RAE BIEDERMANN,	X	
8	EMILY LAINE BIEDERMANN,	X	
	LOREN NOEL BIEDERMANN,	X	
9	AND DANA TRUE BIEDERMANN,	X	
	MINOR CHILDREN	X	GILLESPIE COUNTY, TEXAS

* * * * *

TELEPHONIC CONFERENCE

* * * * *

On Thursday, the 31st day of May,
 2001, from 11:04 o'clock a.m. to 11:22 o'clock a.m.,
 the following proceedings came on to be heard in the
 above-entitled and numbered cause; before the
 Honorable Charles Sherrill, Senior Judge Presiding,
 held in Bandera, Bandera County, Texas:

Proceedings reported by computerized
steno-type machine, valid if it bears my raised seal.

Cindy E. Snider
CSR No. 2739

CINDY E. SNIDER
 OFFICIAL COURT REPORTER
 P. O. BOX 293251
 KERRVILLE, TEXAS 78029-3251 (830) 257-5063

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APPEARANCES

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MR. JACK G. FERRELL, JR., PH.D.
Also Appearing By Telephone

* * * * *

I N D E X

<u>MAY 14, 2001</u>	<u>Page</u>
Proceedings	3
Court Reporter's Certificate	15
Key Word Index	16

1 (In open court:)

2 THE COURT: All right, we have Cindy
3 Snider here, the official court reporter for the
4 216th Judicial District Court, and I believe this is
5 Cause No. 9284; is that correct?

6 MR. HALM: Yes.

7 THE COURT: And, Jodi, you're here?

8 MR. HALM: Yes, Your Honor, I am in
9 San Antonio in Dr. Jack Ferrell's office.

10 THE COURT: All right, and, Pam, are
11 you present?

12 MS. BERGMAN: Yes, Your Honor, I am.

13 THE COURT: All right. All right,
14 then, I have before me, which is hearsay, an
15 affidavit from - I think with the associate of
16 Dr. ---

17 DR. FERRELL: Jack Ferrell.

18 THE COURT: Yes, indeed. Right, now,
19 as I understand, we have a situation. I do not have
20 a file, but I have a situation where there is
21 allegations that the father has sexually
22 inappropriate behavior and, certainly, let me say
23 this right off front: One, I don't have an attorney
24 ad litem in this cause, I guess, but I normally won't
25 proceed without an attorney ad litem; but, also, I

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1 take these matters very seriously. Unless there's
2 any question, I'm going to place the temporary
3 custody of those children in the Department, the
4 Child Protective Services that we used to call them,
5 because I don't know. I only have hearsay evidence.

6 So let me just hear what the situation
7 is, then.

8 MR. NICHOLS: Dr. Ferrell, will you
9 give us a report, please?

10 DR. FERRELL: Surely. I received a
11 call from the children's mother on approximately the
12 28th of May, reporting that there had been an outcry
13 to the maternal aunt regarding some kissing, sleeping
14 together and naked, and that it was made by the
15 five-year-old child, Dana True. I indicated to her
16 that I needed to see the children right away to
17 further assess that and an appointment was set up in
18 which the mother brought all four children to my
19 office yesterday.

20 I briefly saw the children and then
21 asked my associate, Ms. Aguilar-Landin, to interview
22 each of the children individually and to further
23 interview the mother. I then left for Laredo for
24 another matter.

25 I conferenced with Ms. Aguilar-Landin

1 about the results, and she reported that she received
2 an outcry similar or pretty close to what the mother
3 had reported to me.

4 I directed my office to contact
5 Mr. Biedermann to have him come in immediately so
6 that I could evaluate him, and we were unsuccessful
7 in that attempt and I did not believe that we were
8 going to be able to see him prior to a pre-planned
9 vacation with the children to Florida. That left too
10 many loose ends for me, and I directed my office to
11 file with the Court and with both attorneys of record
12 the affidavit of Ms. Aguilar-Landin, which I reviewed
13 in its entirety.

14 I subsequently talked to Mr. Halm
15 after 8:00 p.m., between 8:00 and 9:00 p.m. last
16 night, and it was agreed that he would present
17 Mr. Biedermann to my office at 8:30 this morning,
18 which he did. I visited with Mr. Biedermann, with
19 Mr. Halm, and I also had Ms. Aguilar-Landin visit
20 with Mr. Biedermann, as well.

21 I reviewed the outcry, the claims by
22 the mother and by the child, as well as the other
23 findings from the other children. That evaluation
24 suggested that Dana is a somewhat provocative child,
25 is very huggy- and kissy-oriented, but had limited

1 opportunity to be alone with the father, particularly
2 in a sleeping situation. The children reported that
3 the father usually wears boxers - or all the time
4 wears boxers, which was corroborated by the
5 children's mother. There was no other corroborative
6 evidence to suggest that there had been any
7 inappropriate touch whatsoever, but we still have
8 this very young child who has made this claim that
9 there was kissing and hugging along.

10 It appears that there's less
11 likelihood that that, in fact, has happened. I
12 consulted with the mother, with Mr. Biedermann and
13 then reviewed the other children's records, that
14 suggest that they vie for his attention; they want to
15 be together; that he very rarely sleeps alone, but
16 rather with two or more of the children, and that
17 none of them reported any nudity or inappropriate
18 touch. In fact, Dana reported no inappropriate
19 touch, just very childlike kissing.

20 She also reported that same type of
21 behavior with, she indicated, a policeman that was
22 called to the house, that she spent the day kissing
23 him and the mother reported that Dana and Kyla have
24 also engaged in some romanticized kissing behavior.

25 I have indicated to Mr. Halm, as well

1 as to the mother and to Mr. Nichols this morning,
2 that we need to follow-up with the children. I could
3 not validate and would not validate on the basis of
4 this outcry, this child report; that I have
5 instructed the father not to sleep with the children;
6 that I need to see him upon his return from Florida
7 to fulfill this evaluation, and that until that time
8 I would suggest that all the children are together
9 with him, and that if he goes on the trip to Florida,
10 that he does not sleep in the car or that he needs to
11 get a hotel room and be very prudent about what he
12 does to protect himself from further outcries.

13 I reassured the mother that we are on
14 top of this and that I was going to make those
15 recommendations. I believe I have told Mr. Halm
16 that, as well as Mr. Nichols.

17 THE COURT: All right.

18 MR. NICHOLS: And, Doctor, what about
19 any further testing or examination of these folks?
20 Do you feel that you need that?

21 DR. FERRELL: I'm going to see the
22 children, the mother, I guess, tomorrow. I'm going
23 to -- you have already spoken to Mr. Halm. I
24 suggested that we continue this evaluation with the
25 father, because even if we dispense with this outcry,

1 there are claims and counterclaims that continue to
2 surround these children, and because of their young
3 ages and some perhaps credibility issues, we're going
4 to need some documentation, some test results that
5 clearly show where all these parties are, so that the
6 Court can address all these issues in sort of one
7 fell swoop.

8 MR. NICHOLS: Doctor, do you feel it's
9 in the children's best interests that neither one of
10 these parties discuss, confer or communicate
11 regarding any issue of the divorce or parent-child
12 matter?

13 DR. FERRELL: Absolutely, and
14 moreover, I believe I have told them that I would
15 follow up with the children on an as-needed basis, on
16 a frequent basis to make sure that they have somebody
17 that they can report their feelings about all of
18 this. I have also instructed the father to not
19 address keeping secrets or telling them, prohibiting
20 them from reporting to me, because that that will be
21 seen as someone trying to tamper with these children.
22 They need to be given permission to verbalize their
23 feelings and talk about their experiences and the
24 father and mother, both, have indicated they
25 understand.

1 MR. NICHOLS: You think that's in the
2 children's best interests that they not discuss any
3 of these issues ---

4 DR. FERRELL: Absolutely.

5 MR. NICHOLS: --- with or in front or
6 in the hearing of or through writing, not use them as
7 message carriers?

8 DR. FERRELL: Or the extended family
9 members. I think we need to cut all of that out,
10 just so there's no question about what these children
11 are experiencing.

12 MR. NICHOLS: Okay, I believe,
13 Ms. Bergman, do you have any questions to ask?

14 MS. BERGMAN: No, I don't.

15 MR. NICHOLS: Judge, I believe that's
16 all I have.

17 THE COURT: All right. Any other
18 comments?

19 MR. HALM: Yes, Your Honor, I would
20 like to encourage the Court to allow the scheduled
21 visitation to continue. Father is planning to leave
22 with the children this afternoon for Florida.

23 THE COURT: How long is he to be gone?

24 MR. HALM: He is due back here on June
25 the 15th, at which time we have depositions scheduled

1 on the 16th and 17th.

2 THE COURT: Well, Dr. Ferrell, how do
3 you feel about such a long -- today is the 31st.
4 That's roughly 15 days. The Court is having the best
5 interests of the children at heart, is somewhat
6 reluctant to permit the children to go after there
7 has been somewhat of an outcry, that it has not been
8 verified, and as I understand, until Mr. Halm got -
9 that Mr. Biedermann had refused to - for an
10 individual examination.

11 Now, I'm just a little -- one, I'm
12 concerned about this and I would like any comment by
13 Dr. Ferrell.

14 DR. FERRELL: I have talked to
15 Mr. Biedermann about his plans. I have already
16 addressed the motel issue. He apparently is going to
17 be spending the time in Sarasota, Florida with his
18 mother and father, who are already there. The
19 children are comfortable around the grandmother and
20 grandfather, and it is my intention to give them a
21 call in advance, if he's allowed to go, to express
22 the need to protect the children or every sense of
23 propriety in this matter.

24 It's my understanding that
25 Mr. Biedermann is going to fly back early for

1 depositions, and the children will be with the
2 grandparents there and I will again phone the
3 grandparents for an update while they are gone.

4 THE COURT: All right.

5 DR. FERRELL: I think under the
6 circumstances and because Mr. Biedermann has become
7 somewhat of a known quantity now, that he did come
8 in, he did respond to each and every question that I
9 asked him, and moreover, I then had Ms.
10 Aguilar-Landin interview him and both of us believe
11 that the children's best interests, concerns can be
12 protected, that this is a, quote, "outcry" that may
13 not be - appears to be less credible and can be
14 explained through some other circumstances.

15 I feel very, very comfortable that
16 there was no corroboration by any of the children, to
17 include a nine-year-old sister who was virtually
18 present throughout the visitation in which this
19 allegedly occurred.

20 THE COURT: All right, sir. Let me
21 ask: How many children are involved?

22 DR. FERRELL: There are four children,
23 sir.

24 THE COURT: Are all four going on the
25 vacation?

1 DR. FERRELL: Yes, they are, all four
2 girls, and they are sort of a tight -- I would relate
3 to you, and as Ms. Aguilar-Landin would, they do not
4 appear that they have been coerced or told not to
5 report their feelings, and I have specifically
6 instructed the father to not tamper with them in that
7 regard.

8 THE COURT: All right, sir. The
9 Court, of course, is going to -- I think the main
10 thing is this discussion business; and all the family
11 members are included, the parents, and any other
12 aunts and uncles, and so forth, and friends of the
13 family are not to discuss this matter with the
14 children.

15 The Court will permit the visitation
16 to take place with the father with this provision:
17 That in no event is the father to sleep with any one
18 or more of the children. He is to refrain and
19 conduct himself as a very proper manner, and in the
20 event the Court finds that he is sleeping or such
21 with one of the children, I'm not saying in the
22 sexual sense, but in the same bed, that is, the - and
23 the Court will also appoint the Kurt Rudkin, a local
24 practicing attorney out of Boerne, Texas to be the
25 attorney ad litem, kind of, and he will be needing to

1 speak to the children, of course, but I think it's
2 one that will be closer to Dr. Ferrell and closer to
3 Fredericksburg and so forth; but I will permit the
4 visitation to take place as permitted, as suggested
5 by the doctor here, Dr. Ferrell, and that it's with
6 these understandings and provisions, so both parties
7 have their exceptions, and I will want a
8 psychological work-up on both parents before this is
9 over.

10 MR. NICHOLS: Your Honor.

11 THE COURT: Yes, sir.

12 MR. NICHOLS: I will prepare a
13 proposed order regarding this Court's findings with
14 regard to today, and I think Ms. Bergman had a
15 question.

16 THE COURT: Yes, ma'am.

17 MS. BERGMAN: Your Honor.

18 THE COURT: Yes.

19 MS. BERGMAN: I just wanted to -
20 while we were all here together, wanted to remind
21 opposing counsel and that we have an entry of our
22 Rule 11 Agreement that we read into the record on May
23 14th. We sent that to opposing counsel. There has
24 been some discrepancy or controversy in that. We
25 have ordered the record from the Court. We have

1 gotten that. I think we have actually sent it to
2 opposing counsel now. We read that into the record
3 and we have scheduled with Ms. Henderson an entry of
4 that Rule 11 Agreement on June 26th at 9:00 o'clock.

5 THE COURT: Very good.

6 MR. NICHOLS: Hopefully, we can have
7 the signatures on that to eliminate the necessity of
8 that hearing before that date.

9 THE COURT: Very good. I appreciate
10 everyone and I appreciate your being interested in
11 the children, so the best of luck to everyone. Thank
12 you very, very much.

13 MR. NICHOLS: Thank you.

14 MR. HALM: Thank you.

15 * * * * *

16 (Hearing concluded at 11:22 o'clock
17 a.m.)

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1 STATE OF TEXAS X
 2 COUNTY OF GILLESPIE X

3 I, Cindy E. Snider, Official Court Reporter in
 4 and for the 216th Judicial District Court of
 5 Gillespie County, State of Texas, do hereby certify
 6 that the above and foregoing contains a true and
 7 correct transcription of all portions of evidence and
 8 other proceedings requested by counsel for the
 9 parties in writing to be included in this volume of
 10 the Reporter's Record, in the above-styled
 11 and numbered cause, all of which occurred in open
 12 court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of
 14 the proceedings truly and correctly reflects the
 15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
 17 preparation of this Reporter's Record is \$67.00
 18 and was paid by John Nichols, Jr.

19 Witness my hand and seal on this, the
 20 21st day of June, 2001.

21 Cindy E. Snider
 22 Cindy E. Snider
 23 Official Court Reporter
 24 P.O. Box 293251
 25 Kerrville, Texas 78029-3251
 (830) 257-5063
 CSR No. 2739
 Expires: 12/31/02

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REPORTER'S RECORD

TRIAL COURT CAUSE NO. 9284

IN THE MATTER OF	X	IN THE DISTRICT COURT
THE MARRIAGE OF	X	
	X	
AVIAN ANN BIEDERMANN	X	
AND	X	
KENNETH KYLE BIEDERMANN	X	216TH JUDICIAL DISTRICT
	X	
	X	
AND IN THE INTEREST OF	X	
KYLA RAE BIEDERMANN,	X	
EMILY LAINE BIEDERMANN,	X	
LOREN NOEL BIEDERMANN,	X	
AND DANA TRUE BIEDERMANN,	X	
MINOR CHILDREN	X	GILLESPIE COUNTY, TEXAS

* * * * *

KEY WORD INDEX

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-\$-			-9-			3:25 12:24 12:25			10:22 11:1 11:16		
\$ [1]	15:17		9284 [2]	1:2 3:5		attorneys [1]	5:11		11:21 11:22 12:14		
			16:2			aunt [1]	4:13		12:18 12:21 13:1		
			997-6975 [1]	2:13		aunts [1]	12:12		14:11 16:9		
			997-9485 [1]	2:13		Avian [2]	1:4 2:9		children's [6]	4:11	
00795804 [1]	2:4		9:00 [2]	5:15 14:4		16:4			6:5 6:13 8:9		
08804350 [1]	2:11					away [1]	4:16		9:2 11:11		
									Cindy [4]	1:24 3:2	
									15:3 15:21		
									circumstances [2]	11:6	
									11:14		
									claim [1]	6:8	
									claims [2]	5:21 8:1	
									clearly [1]	8:5	
									close [1]	5:2	
									closer [2]	13:2 13:2	
									coerced [1]	12:4	
									comfortable [2]	10:19	
									11:15		
									comment [1]	10:12	
									comments [1]	9:18	
									communicate [1]	8:10	
									computerized [1]	1:23	
									concerned [1]	10:12	
									concerns [1]	11:11	
									concluded [1]	14:16	
									conduct [1]	12:19	
									confer [1]	8:10	
									CONFERENCE [1]		
									1:12		
									conferenced [1]	4:25	
									consulted [1]	6:12	
									contact [1]	5:4	
									contains [1]	15:6	
									continue [2]	7:24	
									8:1 9:21		
									controversy [1]	13:24	
									correct [2]	3:5	
									15:7		
									correctly [1]	15:14	
									corroborated [1]	6:4	
									corroboration [1]	11:16	
									corroborative [1]	6:5	
									cost [1]	15:16	
									counsel [4]	13:21	
									13:23 14:2 15:8		
									counterclaims [1]	8:1	
									County [5]	1:9	
									1:19 15:2 15:5		
									16:9		
									course [2]	12:9 13:1	
									court [39]	1:2 1:3	
									2:22 3:1 3:2		
									3:3 3:4 3:7		
									3:10 3:13 3:18		
									5:11 7:17 8:6		
									9:17 9:20 9:23		
									10:2 10:4 11:4		
									11:20 11:24 12:8		
									12:9 12:15 12:20		
									12:23 13:11 13:16		
									13:18 13:25 14:5		
-0-			-A-			-B-			-C-		
00795804 [1]	2:4		a.m [3]	1:15 1:15		Bandera [2]	1:19		car [1]	7:10	
08804350 [1]	2:11		14:17			1:19			carriers [1]	9:7	
			able [1]	5:8		basis [3]	7:3 8:15		certainly [1]	3:22	
			above [1]	15:6		8:16			Certificate [1]	2:22	
			above-entitled [1]	1:17		bears [1]	1:23		certify [3]	15:5 15:13	
			above-styled [1]	15:10		become [1]	11:6		15:16		
			Absolutely [2]	8:13		bed [1]	12:22		chambers [1]	15:12	
			9:4			behavior [3]	3:22		Charles [1]	1:18	
			ad [3]	3:24 3:25		6:21 6:24			child [6]	4:4 4:15	
			12:25			Bergman [7]	2:3		5:22 5:24 6:8		
			address [2]	8:6		3:12 9:13 9:14			7:4		
			8:19			13:14 13:17 13:19			childlike [1]	6:19	
			addressed [1]	10:16		best [5]	8:9 9:2		children [33]	1:9 4:18	
			advance [1]	10:21		10:4 11:11 14:11			4:3 4:16 4:18		
			affidavit [2]	3:15		between [1]	5:15		4:20 4:22 5:9		
			5:12			Biedermann [23]	1:4		5:23 6:2 6:16		
			afternoon [1]	9:22		1:5 1:7 1:8	1:8		7:2 7:5 7:8		
			again [1]	11:2		1:8 1:9 2:9	2:9		7:22 8:2 8:15		
			ages [1]	8:3		2:15 5:5 5:17	5:17		8:21 9:10 9:22		
			agreed [1]	5:16		5:18 5:20 6:12	6:12		10:5 10:6 10:19		
			Agreement [2]	13:22		10:9 10:15 10:25	10:25				
			14:4			11:6 16:4 16:5	16:5				
			Aguilar-Landin [6]			16:7 16:8 16:8	16:8				
			4:21 4:25 5:12			Boerne [1]	12:24				
			5:19 11:10 12:3			Box [1]	15:22				
			allegations [1]	3:21		boxers [2]	6:3				
			allegedly [1]	11:19		6:4					
			Allen [2]	2:10 2:11		briefly [1]	4:20				
			allow [1]	9:20		brought [1]	4:18				
			allowed [1]	10:21		business [1]	12:10				
			alone [2]	6:1 6:15							
			along [1]	6:9							
			Ann [3]	1:4 2:9							
			16:4								
			Antonio [1]	3:9							
			appear [1]	12:4							
			APPEARANCES [1]	2:1							
			Appearing [1]	2:16							
			appoint [1]	12:23							
			appointment [1]	4:17							
			appreciate [2]	14:9							
			14:10								
			as-needed [1]	8:15							
			assess [1]	4:17							
			associate [2]	3:15							
			4:21								
			attempt [1]	5:7							
			attention [1]	6:14							
			attorney [7]	2:2							
			2:4 2:10 3:23								

14:9 15:3 15:4 15:12 15:22 16:2 16:3	6:6 15:7	girls [1] 12:2 given [1] 8:22 goes [1] 7:9 gone [2] 9:23 11:3 good [2] 14:5 14:9 grandfather [1] 10:20 grandmother [1] 10:19 grandparents [2] 11:2 11:3 guess [2] 3:24 7:22	9:2 10:5 11:11 interview [3] 4:21 4:23 11:10 involved [1] 11:21 issue [2] 8:11 10:16 issues [3] 8:3 8:6 9:3
Court's [1] 13:13 credibility [1] 8:3 credible [1] 11:13 CSR [2] 1:25 15:24 custody [1] 4:3 cut [1] 9:9	examination [2] 7:19 10:10 exceptions [1] 13:7 exhibits [1] 15:15 experiences [1] 8:23 experiencing [1] 9:11 Expires [1] 15:24 explained [1] 11:14 express [1] 10:21 extended [1] 9:8	<hr/> -H- <hr/> Halm [13] 2:10 2:11 3:6 3:8 5:14 5:19 6:25 7:15 7:23 9:19 9:24 10:8 14:14 hand [1] 15:19 hear [1] 4:6 heard [1] 1:16 hearing [3] 9:6 14:8 14:16 hearsay [2] 3:14 4:5 heart [1] 10:5 held [1] 1:19 Henderson [1] 14:3 hereby [1] 15:5 himself [2] 7:12 12:19 Honor [5] 3:8 3:12 9:19 13:10 13:17 Honorable [1] 1:18 Hopefully [1] 14:6 hotel [1] 7:11 house [1] 6:22 Houston [1] 2:6 hugging [1] 6:9 huggy [1] 5:25	<hr/> -J- <hr/> J [2] 2:10 2:11 Jack [3] 2:16 3:9 3:17 Jodi [1] 3:7 Jody [2] 2:10 2:11 John [2] 2:2 2:5 JR [1] 2:16 Judge [2] 1:18 9:15 Judicial [4] 1:5 3:4 15:4 16:5 June [2] 9:24 14:4
<hr/> -D- <hr/> D [1] 2:19 Dana [6] 1:9 4:15 5:24 6:18 6:23 16:9 date [1] 14:8 days [1] 10:4 Department [1] 4:3 depositions [2] 9:25 11:1 directed [2] 5:4 5:10 discrepancy [1] 13:24 discuss [3] 8:10 9:2 12:13 discussion [1] 12:10 dispense [1] 7:25 District [6] 1:3 1:5 3:4 15:4 16:3 16:5 divorce [1] 8:11 doctor [3] 7:18 8:8 13:5 documentation [1] 8:4 Dr [17] 3:9 3:16 3:17 4:8 4:10 7:21 8:13 9:4 9:8 10:2 10:13 10:14 11:5 11:22 12:1 13:2 13:5 due [1] 9:24	<hr/> -F- <hr/> fact [2] 6:11 6:18 family [3] 9:8 12:10 12:13 father [12] 3:21 6:1 6:3 7:5 7:25 8:18 8:24 9:21 10:18 12:6 12:16 12:17 Fax [2] 2:7 2:13 feelings [3] 8:17 8:23 12:5 fell [1] 8:7 Ferrell [17] 2:16 3:17 3:17 4:8 4:10 7:21 8:13 9:4 9:8 10:2 10:13 10:14 11:5 11:22 12:1 13:2 13:5 Ferrell's [1] 3:9 file [2] 3:20 5:11 findings [2] 5:23 13:13 finds [1] 12:20 five-year-old [1] 4:15 Florida [5] 5:9 7:6 7:9 9:22 10:17 fly [1] 10:25 folks [1] 7:19 follow [1] 8:15 follow-up [1] 7:2 following [1] 1:16 foregoing [1] 15:6 forth [2] 12:12 13:3 four [4] 4:18 11:22 11:24 12:1 Fredericksburg [2] 2:12 13:3 frequent [1] 8:16 friends [1] 12:12 front [2] 3:23 9:5 fulfill [1] 7:7	<hr/> -I- <hr/> immediately [1] 5:5 inappropriate [4] 3:22 6:7 6:17 6:18 include [1] 11:17 included [2] 12:11 15:9 indeed [1] 3:18 Index [2] 2:23 16:12 indicated [4] 4:15 6:21 6:25 8:24 individual [1] 10:10 individually [1] 4:22 instructed [3] 7:5 8:18 12:6 intention [1] 10:20 INTEREST [2] 1:7 16:7 interested [1] 14:10 interests [4] 8:9	<hr/> -K- <hr/> K [1] 2:3 keeping [1] 8:19 Kenneth [3] 1:5 2:15 16:5 Kerrville [1] 15:23 Key [2] 2:23 16:12 kind [1] 12:25 kissing [5] 4:13 6:9 6:19 6:22 6:24 kissy-oriented [1] 5:25 known [1] 11:7 Kurt [1] 12:23 Kyla [3] 1:7 6:23 16:7 Kyle [3] 1:5 2:15 16:5
<hr/> -E- <hr/> E [4] 1:24 2:19 15:3 15:21 early [1] 10:25 eliminate [1] 14:7 Emerald [1] 2:12 EMILY [2] 1:8 16:8 encourage [1] 9:20 ends [1] 5:10 engaged [1] 6:24 entirety [1] 5:13 entry [2] 13:21 14:3 evaluate [1] 5:6 evaluation [3] 5:23 7:7 7:24 event [2] 12:17 12:20 evidence [3] 4:5	<hr/> -G- <hr/> G [1] 2:16 Gillespie [4] 1:9 15:2 15:5 16:9	<hr/> -L- <hr/> L AINE [2] 1:8 16:8 Laredo [1] 4:23 last [1] 5:15 Law [5] 2:2 2:4 2:5 2:10 2:11 leave [1] 9:21 left [2] 4:23 5:9 less [2] 6:10 11:13 likelihood [1] 6:11 limited [1] 5:25 litem [3] 3:24 3:25 12:25 local [1] 12:23 Loop [1] 2:12 loose [1] 5:10 LOREN [2] 1:8 16:8	

luck [1] 14:11	nudity [1] 6:17	pre-planned [1] 5:8	6:17 6:18 6:20
-M-	numbered [2] 1:17	preparation [1] 15:17	6:23 15:12
ma'am [1] 13:16	15:11	prepare [1] 13:12	reporter [3] 3:3
machine [1] 1:23	-O-	present [3] 3:11	15:3 15:22
main [1] 12:9	o'clock [4] 1:15	5:16 11:18	Reporter's [6] 1:1
manner [1] 12:19	1:15 14:4 14:16	Presiding [1] 1:18	2:22 15:10 15:13
MARRIAGE [2] 1:3	occurred [2] 11:19	pretty [1] 5:2	15:17 16:1
16:3	15:11	proceed [1] 3:25	reporting [2] 4:12
maternal [1] 4:13	off [1] 3:23	proceedings [5] 1:16	8:20
matter [6] 1:3	offered [1] 15:15	1:23 2:21 15:8	requested [1] 15:8
4:24 8:12 10:23	office [5] 3:9 4:19	15:14	respective [1] 15:15
12:13 16:3	5:4 5:10 5:17	prohibiting [1] 8:19	respond [1] 11:8
matters [1] 4:1	Offices [2] 2:5	proper [1] 12:19	Respondent [1] 2:15
may [5] 1:14 2:20	2:11	proposed [1] 13:13	results [2] 5:1
4:12 11:12 13:22	official [3] 3:3	propriety [1] 10:23	8:4
McKinney [1] 2:5	15:3 15:22	protect [2] 7:12	return [1] 7:6
members [2] 9:9	one [7] 3:23 8:6	10:22	reviewed [3] 5:12
12:11	8:9 10:11 12:17	protected [1] 11:12	5:21 6:13
message [1] 9:7	12:21 13:2	Protective [1] 4:4	right [12] 3:2 3:10
MINOR [2] 1:9	open [2] 3:1 15:11	provision [1] 12:16	3:13 3:13 3:18
16:9	opportunity [1] 6:1	provisions [1] 13:6	3:23 4:16 7:17
moreover [2] 8:14	opposing [3] 13:21	provocative [1] 5:24	9:17 11:4 11:20
11:9	13:23 14:2	prudent [1] 7:11	12:8
morning [2] 5:17	order [1] 13:13	psychological [1] 13:8	romanticized [1] 6:24
7:1	ordered [1] 13:25	-Q-	room [1] 7:11
motel [1] 10:16	outcries [1] 7:12	quantity [1] 11:7	roughly [1] 10:4
mother [13] 4:11	outcry [7] 4:12 5:2	questions [1] 9:13	Rudkin [1] 12:23
4:18 4:23 5:2	5:21 7:4 7:25	quote [1] 11:12	Rule [2] 13:22 14:4
5:22 6:5 6:12	10:7 11:12	-R-	-S-
6:23 7:1 7:13	-P-	RAE [2] 1:7 16:7	San [1] 3:9
7:22 8:24 10:18	p.m [2] 5:15 5:15	raised [1] 1:23	Sarasota [1] 10:17
Ms [14] 2:3 3:12	P.O [1] 15:22	rarely [1] 6:15	saw [1] 4:20
4:21 4:25 5:12	Page [1] 2:20	rather [1] 6:16	SBOT [3] 2:3 2:4
5:19 9:13 9:14	paid [1] 15:18	read [2] 13:22 14:2	2:11
11:9 12:3 13:14	Pam [1] 3:10	reassured [1] 7:13	scheduled [3] 9:20
13:17 13:19 14:3	PAMELA [1] 2:3	received [2] 4:10	9:25 14:3
-N-	parent-child [1] 8:11	5:1	seal [2] 1:23 15:19
N [1] 2:19	parents [2] 12:11	recommendations [1] 7:15	secrets [1] 8:19
naked [1] 4:14	13:8	record [9] 1:1 5:11	see [4] 4:16 5:8
necessity [1] 14:7	particularly [1] 6:1	13:22 13:25 14:2	7:6 7:21
need [7] 7:2 7:6	parties [5] 8:5	15:10 15:13 15:17	Senior [1] 1:18
7:20 8:4 8:22	8:10 13:6 15:9	16:1	sense [2] 10:22 12:22
9:9 10:22	15:15	records [1] 6:13	sent [2] 13:23 14:1
needed [1] 4:16	perhaps [1] 8:3	reflects [1] 15:14	seriously [1] 4:1
needing [1] 12:25	permission [1] 8:22	refrain [1] 12:18	Services [1] 4:4
needs [1] 7:10	permit [3] 10:6	refused [1] 10:9	set [1] 4:17
neither [1] 8:9	12:15 13:3	regard [2] 12:7	sexual [1] 12:22
Nichols [15] 2:2	permitted [1] 13:4	regarding [3] 4:13	sexually [1] 3:21
2:5 4:8 7:1	Petitioner [1] 2:9	8:11 13:13	Sherrill [1] 1:18
7:16 7:18 8:8	PH.D [1] 2:16	relate [1] 12:2	show [1] 8:5
9:1 9:5 9:12	phone [1] 11:2	reluctant [1] 10:6	signatures [1] 14:7
9:15 13:10 13:12	place [3] 4:2 12:16	remind [1] 13:20	similar [1] 5:2
14:6 14:13	13:4	report [4] 4:9 7:4	sister [1] 11:17
night [1] 5:16	planning [1] 9:21	8:17 12:5	situation [4] 3:19
nine-year-old [1] 11:17	plans [1] 10:15	reported [9] 1:23	3:20 4:6 6:2
NOEL [2] 1:8 16:8	policeman [1] 6:21	5:1 5:3 6:2	sleep [3] 7:5 7:10
none [1] 6:17	portions [1] 15:7	sleeping [3] 4:13	12:17
normally [1] 3:24	practicing [1] 12:24	6:2 12:20	sleeps [1] 6:15
now [4] 3:18 10:11			
11:7 14:2			

Snider [4] 1:24 15:3 15:21	3:3	true [4] 1:9 15:6 16:9	4:15	-Y-	
someone [1]	8:21	truly [1]	15:14	yesterday [1]	4:19
somewhat [4]	5:24	trying [1]	8:21	young [2] 6:8	8:2
sort [2] 8:6	12:2	two [1]	6:16		
Speak [1] 13:1		type [1]	6:20		
specifically [1]	12:5	-U-			
spending [1]	10:17	uncles [1]	12:12		
spent [1]	6:22	under [1]	11:5		
spoken [1]	7:23	understand [3]	3:19		
SR [1]	2:2	8:25 10:8			
State [2]	15:1 15:5	understandings [1]			
stenotype [1]	1:23	13:6			
still [1]	6:7	Unless [1]	4:1		
subsequently [1]	5:14	unsuccessful [1]	5:6		
such [2]	10:3 12:20	up [2]	4:17 8:15		
suggest [3]	6:6	update [1]	11:3		
6:14 7:8		used [1]	4:4		
suggested [3]	5:24	usually [1]	6:3		
7:24 13:4		-V-			
Suite [1]	2:6	vacation [2]	5:9		
Surely [1]	4:10	11:25			
surround [1]	8:2	valid [1]	1:23		
swoop [1]	8:7	validate [2]	7:3		
-T-		verbalize [1]	8:22		
tamper [2]	8:21	verified [1]	10:8		
12:6		vie [1]	6:14		
Telephone [1]	2:16	virtually [1]	11:17		
TELEPHONIC [1]		visit [1]	5:19		
1:12		visitation [4]	9:21		
telling [1]	8:19	11:18 12:15 13:4			
temporary [1]	4:2	visited [1]	5:18		
test [1]	8:4	volume [1]	15:9		
testing [1]	7:19	-W-			
Texas [9]	1:9 1:19	wears [2]	6:3 6:4		
2:6 2:12 12:24		whatsoever [1]	6:7		
15:1 15:5 15:23		without [1]	3:25		
16:9		Witness [1]	15:19		
Thank [3]	14:11 14:13	Word [2]	2:23 16:12		
14:14		work-up [1]	13:8		
through [2]	9:6	writing [2]	9:6		
11:14		15:9			
throughout [1]	11:18	-X-			
Thursday [1]	1:14	X [32]	1:3 1:3		
tight [1]	12:2	1:4 1:4 1:5			
today [2]	10:3 13:14	1:5 1:6 1:6			
together [4]	4:14	1:7 1:7 1:8			
6:15 7:8 13:20		1:8 1:9 1:9			
tomorrow [1]	7:22	2:19 15:1 15:1			
too [1]	5:9	15:2 16:3 16:3			
top [1]	7:14	16:4 16:4 16:5			
total [1]	15:16	16:5 16:6 16:6			
touch [3]	6:7 6:18	16:7 16:7 16:8			
6:19		16:8 16:9 16:9			
transcription [1]	15:7				
TRIAL [2]	1:2				
16:2					
trip [1]	7:9				

NO. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIDERMAN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIDERMAN, MINOR
CHILDREN

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IN THE DISTRICT COURT

GILLESPIE COUNTY, TEXAS

FILED
At 8:57 O'clock AM

JUN 11 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
216TH JUDICIAL DISTRICT
*By Jan Davis
Chief Deputy*

**RESPONDENT'S ANSWER TO PETITIONER'S FIRST AMENDED PETITION
AND MOTION FOR RULE 13 SANCTIONS**

TO THE HONORABLE COURT:

KENNETH KYLE BIEDERMANN and BL&H, Inc., d/b/a Biedermann's Ace Hardware, a Texas corporation, respondent, file this amended answer to petitioner's first amended petition, and by way of answer shows:

I.

Respondent denies generally each and every allegation in petitioner's first amended petition.

II.

Respondent denies any claim for reimbursement to be made by Respondent or by the community estate to Petitioner's estate. Petitioner's separate estate and the community estate have received value or quid pro quo, and there has not been unjust

enrichment to the detriment of the community estate of the parties. Respondent has been compensated reasonable and justly for Respondent's work, time, labor, and effort, and Petitioner has enjoyed, used, and benefited from the community compensation and benefit. Respondent has not devoted an excessive amount of time, talent, or labor to the management of Respondent's separate estate. Such efforts were reasonable and prudent to preserve Respondent's separate estate and did not work to the detriment of Petitioner or the community estate.

III.

Petitioner seeks authority from this Court to place the Respondent's business in a receivership. Petitioner has no interest in this business. As alleged in the affidavit attached hereto and incorporated by reference, KENNETH KYLE BIEDERMANN, has provided Petitioner and her attorneys with clear and convincing evidence of his acquisition of BL&H, Inc. as a gift from his father. The case law is clearly established and long standing that property that comes to an individual by gift is that person's separate property even if there is a current marital relationship. TEX. CONST. Art. XVI, §15, *Eggmeyer v. Eggmeyer*, 554 S.W.2d 137, 140 (Tex.1977). Because Petitioner and her attorneys had actual knowledge of the stock transfer and its nature, the attempt to place the business in receivership reflects that the amended action was brought for the purpose of harassment.

Petitioner requests that a note executed to Kenneth and Libby Biedermann, be declared a nullity or have a value of \$0 placed on it. Respondent specially excepts to this assertion and requests that since more than one loan was made during the course of the marriage, Petitioner state with clarity whether the note she requests to be declared a

nullity is for the down payment on the couple's first house, the note executed for business operation, or the note for debt consolidation. Respondent is unable to determine from her pleadings the debt she wishes to contest.

Respondent asserts separate property status for BL&H, Inc. and requests that all available sanctions against Petitioner and her attorneys be imposed after notice and hearing.

IV.

In further defense of allegations made in Petitioner's First Amended Petition, Respondent, Kenneth Kyle Biedermann, responds to the litany of charges as follows:

- a. Intentional, Knowing, or Reckless Bodily Injury—Respondent contends that at the time alleged in Petitioner's First Amended Petition, Respondent was acting in self-defense and defense of his children when Petitioner failed to allow him access to his home to see his children.
- b. Threat of Imminent Bodily Injury—Respondent contends that at the time and place alleged the act or conduct alleged was not outrageous and did not result in serious or severe emotional distress.
- c. Offensive or Provocative Physical Contact—Respondent contends at the time and place alleged by Petitioner, Respondent was acting in response to verbal provocation.
- d. All other allegations are generally denied.

V.

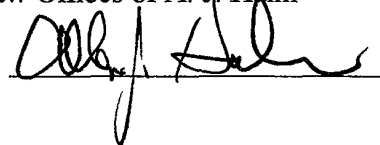
It has been necessary for the preservation of respondent's rights and property to employ a licensed attorney, Allen J. Halm, to represent respondent in this suit. Respondent had agreed to pay this attorney for services rendered in connection with this action the sum of \$2,500.00, which sum was a reasonable attorney's fee for a suit of this nature. However, there has been undue legal maneuverings and increased costs associated with Petitioner's claims of child abuse and need for placement of business in receivership along with her litany of charges that have increased the costs of this suit. It is anticipated now that a reasonable attorney fee, through trial of this case would be \$22,500.00 Therefore, judgment should be rendered against petitioner for a reasonable attorney's fee in the sum of \$2,2500.00, and in the event of an appeal to the court of appeals, for the further sum of \$5000.00 as a reasonable attorney's fee for services rendered in connection with the appeal.

WHEREFORE, respondent requests that the Court set a hearing in this cause, that after notice and hearing, , and that upon the determination that Petitioner and her attorneys did indeed file a frivolous lawsuit in this Court, sanctions be imposed, that judgment be awarded against petitioner in favor of KENNETH KYLE BIEDERMANN, respondent or ALLEN J. HALM for reasonable attorney's fees and that respondent recover all costs together with such other and further relief to which respondent may be justly entitled.

Respectfully submitted,

The Law Offices of A. J. Halm

By:

A handwritten signature in black ink, appearing to read "Allen J. Halm", written over a horizontal line.

Allen J. Halm
SBOT #08804350
340 Emerald Loop
Fredericksburg, Texas 78624
(830) 997-6975
(830) 997-9485 FAX

ALTERNATIVE DISPUTE RESOLUTION CERTIFICATION

I am a party to this case. The following statement is intended to comply with the policy of the State of Texas pursuant to Chapter 154 of the Texas Civil Practice and Remedies Code and the provisions of the Texas Family Code §§3.522 and 102.0085:

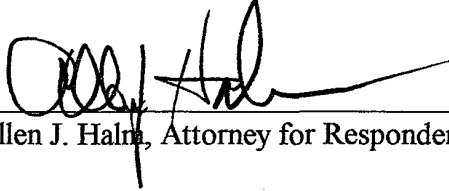
“I AM AWARE THAT IT IS THE POLICY OF THE STATE OF TEXAS TO PROMOTE THE AMICABLE AND NONJUDICIAL SETTLEMENT OF DISPUTES INVOLVING CHILDREN AND FAMILIES. I AM AWARE OF ALTERNATIVE DISPUTE RESOLUTION METHODS INCLUDING MEDIATION. WHILE I RECOGNIZE THAT ALTERNATIVE DISPUTE RESOLUTION IS AN ALTERNATIVE TO AND NOT A SUBSTITUTE FOR A TRIAL AND THAT THIS CASE MAY BE TRIED IF IT IS NOT SETTLED, I REPRESENT TO THE COURT THAT I WILL ATTEMPT IN GOOD FAITH TO RESOLVE BEFORE FINAL TRIAL CONTESTED ISSUES IN THIS CASE BY ALTERNATIVE DISPUTE RESOLUTION WITHOUT THE NECESSITY OF COURT INTERVENTION”.

Original signed in Original Answer
KENNETH KYLE BIEDERMANN, Respondent

CERTIFICATE OF SERVICE

I certify that a true copy of Respondent's Answer to Petitioner's First Amended Petition and Request for Rule 13 Sanctions has, on this day, been sent by certified mail to Pam Bergman and John Nichols, The Law Offices of John Nichols, 1301 McKinney, Suite 3636, Houston, Texas 77010, attorney of record for petitioner.

SIGNED this 11th day of June 2001.


Allen J. Halm, Attorney for Respondent

NO. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIDERMAN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIDERMAN, MINOR
CHILDREN

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IN THE DISTRICT COURT

GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

RESPONDENT'S AFFIDAVIT IN SUPPORT OF APPLICATION OF RULE 13

KENNETH KYLE BIEDERMANN, appeared in person before me today and
stated under oath:

“My name is Kenneth Kyle Biedermann. I am competent to make this affidavit.
The facts stated in this affidavit are within my personal knowledge and are true and
correct.

“I am the Respondent in the above entitled and numbered cause before this Court.

“I am the president and sole shareholder of BL&H, Inc. d/b/a Biedermann's Ace
Hardware, a duly formed Texas corporation in good standing.

“On May 15, 2001, I was served with Petitioner's First Amended Petition for
Divorce in which my wife through her attorneys is seeking to place my business in
receivership.

“My wife claims an ownership interest that she knows to be false and without merit. Her attorneys are aware of the same.

“On or about March 22, 2001, prior to mediation proceedings. My attorney and I presented opposing counsel, Pam Bergman and John Nichols with the BL&H stock certificate and Affidavit of Transfer (Exhibit 1) for the purpose of establishing the separate nature of that property. My attorney discussed a case with the other attorneys about the fact that this gifting established the property as my separate property even though I was married at the time that I acquired the stock and the ownership interest from my father.

“I know that this attempt to place my business in receivership is frivolous and brought solely for the purpose of harassment.”



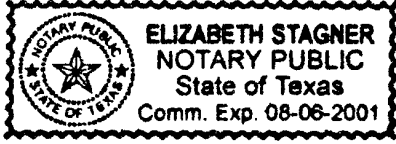
KENNETH KYLE BIEDERMANN, Affiant

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF GILLESPIE §

BEFORE ME, the undersigned NOTARY PUBLIC, personally appeared KENNETH KYLE BIEDERMANN, known to me to be the person whose name is subscribed to the foregoing affidavit and after being duly sworn stated on his oath that he has read the foregoing affidavit and that it is true.

SWORN AND SUBSCRIBED before me by the said KENNETH KYLE
BIEDERMANN on this the 30th day of May, 2001.



Elizabeth Stagner
Elizabeth Stagner, Notary Public for the
State of Texas

My commission expires: 8-6-01

FILED
At 1:41 O'clock P.M.

No. 9284

JUN 14 2001

IN THE MATTER OF §
THE MARRIAGE OF §
§
AVIAN ANN BIEDERMANN §
AND §
KENNETH KYLE BIEDERMANN §
§
AND IN THE INTERESTS OF §
KYL A RAE BIEDERMANN, §
EMILY LAINE BIEDERMANN, §
LOREN NOEL BIEDERMANN AND §
DANA TRUE BIEDERMANN, MINOR §
CHILDREN §

IN THE DISTRICT COURT §
DISTRICT CLERK §
GILLESPIE COUNTY, TEXAS §
B. J. Melody Mundy §
Deputy §

GILLESPIE COUNTY, T E X A S §
§
216TH JUDICIAL DISTRICT

Rule 11 Agreement for Additional Temporary Orders

Pursuant to Rule 11, TEX. R. CIV. P., Avian Ann Biedermann, Petitioner, and Kenneth Kyle Biedermann, Respondent, through their respective attorneys of record, agree to additional temporary orders as follows:

1. The parties agree and IT IS ORDERED that Petitioner and Respondent shall each deliver to opposing counsel and file with the clerk of this Court a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties substantially in the form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), Form 7-1. IT IS ORDERED that Petitioner shall deliver Petitioner's inventory to opposing counsel and file it with the clerk of the Court by July 15, 2001. IT IS ORDERED that Respondent shall deliver Respondent's inventory to opposing counsel and file it with the clerk of the Court by July 15, 2001.
2. The parties agree and IT IS ORDERED that on May 20, 2001 at 4:30 P.M., Respondent, Kenneth Kyle Biedermann shall be allowed access to the residence at 110 Hackberry Street, Fredericksburg, Texas 78624, for the sole purpose of conducting a video-taped walk-through inspection of the household furniture, furnishings, fixtures, and appliances located therein. This inspection shall be

conducted by Respondent and a witness of his choice in the presence of Petitioner, Avian Anne Biedermann and a witness of her choice and in the absence of the children.

3. The Parties agree and IT IS ORDERED that Dr. Jack G. Ferrell, 14310 Northbrook Dr., Suite 120, San Antonio, Texas 78232, 210-499-5025, 210-499-5825 facsimile, is appointed to interview, examine, evaluate, and consult with the parties and the children to prepare a custody evaluation to be filed with the Court on or before August 1, 2001. The parties further agree and IT IS ORDERED that the earliest available appointments for the parties and the children shall be made through the Law Offices of John Nichols and notices sent to Allen J. (Jody) Halm forthwith.
4. The parties agree and IT IS ORDERED that Avian Anne Biedermann and Kenneth Kyle Biedermann, when not in present possession of the children, shall be allowed daily telephone access to the children on a reasonable basis, the time and length of the phone calls to be in accordance with family rules in each party's respective household. The parties further agree and IT IS ORDERED that if either party travels outside of Gillespie County with the children, that party shall provide to the other party with appropriate telephone contact information.
5. The parties agree and IT IS ORDERED that Kenneth Kyle Biedermann shall be responsible for the appearance of his parents, Kenneth Paul Biedermann and Kathryn Elizabeth Biedermann at the Law Office of Bergman & Nichols, L.L.P., 307 W. Main Street, Fredericksburg, Texas 78624 for deposition testimony, as follows:
 - a.) Kenneth Paul Biedermann - June 16, 2001 at 9:00 A.M.
 - b.) Kathryn Elizabeth Biedermann - June 16, 2001 at 2:00 P.M.
6. The parties agree and IT IS ORDERED that Avian Anne Biedermann shall be responsible for the appearance of her sister, Tara Stark, at 4:00 P.M. on June 16, 2001, at the law office of Bergman & Nichols, L.L.P., 307 W. Main Street, Fredericksburg, Texas 78624 for deposition testimony.
7. The parties agree and IT IS ORDERED that the parties shall appear at the Law Office of Bergman & Nichols, L.L.P., 307 W. Main Street, Fredericksburg, Texas 78624 for deposition testimony, as follows:

- a.) Kenneth Kyle Biedermann - June 15, 2001 at 9:00 A.M.
 - b.) Avian Anne Biedermann - June 15, 2001 at 2:00 P.M.
8. The parties agree and IT IS ORDERED that the child, Kyla Biedermann shall be allowed to attend Day Camp during the June 18-21, 2001 session.
 9. The parties agree and IT IS ORDERED that Kenneth Kyle Biedermann shall have the right of possession with the children for uninterrupted, extended summer visitation beginning at the time the children's school is regularly dismissed on the last day of school, May 31, 2001, and ending during the early evening of June 15, 2001. Kenneth Kyle Biedermann agrees and is so ORDERED to give Avian Anne Biedermann reasonable notice as to the exact time of the children's return on June 15, 2001.
 10. The parties agree and IT IS ORDERED that Avian Anne Biedermann shall have the right of possession with the children for an uninterrupted, extended summer visitation during the summer of 2001, specific dates to be determined and specified by Avian Anne Biedermann. Avian Anne Biedermann agrees and is so ORDERED to give Kenneth Kyle Biedermann reasonable notice of specific dates of her extended summer visitation with the children.
 11. The parties agree and IT IS ORDERED that the conservators shall have possession of the children at times mutually agreed to in advance by the parties, and, in the absence of mutual agreement, it is ORDERED that the conservators shall have possession of the children in accordance with the Agreed Temporary Orders Pursuant to "*Mediation Agreement on Temporary Orders Until March 22, 2001.*"
 12. The parties agree and IT IS ORDERED that temporary family support shall be paid by Kenneth Kyle Biedermann in accordance with the Agreed Temporary Orders Pursuant to "*Mediation Agreement on Temporary Orders Until March 22, 2001*" until the parties reach an agreement modifying temporary family support. or until further order of this Court. If an agreement is not reached within three weeks of the entry of this Rule 11 Agreement, either party shall be allowed to set the issue for hearing.
 13. The parties agree and IT IS ORDERED that a disinterested third party be chosen by agreement of the parties for the purpose of counseling with the parties, mediating parent-child issues of the parties, and encouraging the parties to communicate with each other in the best interest of their children.

14. The parties agree and IT IS ORDERED that if Kenneth Kyle Biedermann is unable to sell an air conditioner unit for which he is attempting to find a buyer, Mr. John Nichols will pay for Kyla Biedermann's summer day camp tuition.

Pamela K. Bergman

PAMELA K. BERGMAN
SBT #00795804
1301 McKinney, Suite 3636
Houston, Texas 77010
713/654-0708
713/654-0706 FAX

Attorney for Avian Ann Biedermann

DATE: 6/4/01

Allen J. Halm *

ALLEN J. HALM
SBT # 08804350
307 W. Main, Suite 101
Fredericksburg, Texas 78624
830/997-6975
830/997-9485 FAX

Attorney for Kenneth Kyle Biedermann

DATE: 6/4/01

** subject to approval provision of #12*

ORIGINAL

NO. 9284

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IN THE MATTER OF)
THE MARRIAGE OF)
AVIAN ANN BIEDERMANN)
AND)
KENNETH KYLE BIEDERMANN)
AND IN THE INTERESTS OF)
KYL A RAE BIEDERMANN,)
EMILY LAINE BIEDERMANN,)
LOREN NOEL BIEDERMANN)
AND DANA TRUE BIEDERMANN,)
MINOR CHILDREN.)

IN THE DISTRICT COURT

FILED
At 11:20 o'clock A.M.
GILLESPIE COUNTY, TEXAS

SEP 13 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
216TH JUDICIAL DISTRICT

REPORTER'S CERTIFICATION

ORAL DEPOSITION OF AVIAN A. BIEDERMANN

VOLUME 1

JUNE 15, 2001

I, Sharon L. McDonald, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, AVIAN A. BIEDERMANN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on July 3rd, 2001, to the witness or to the attorney for the witness for examination, signature, and return to me by July 23rd, 2001;

That the amount of time used by each party at the deposition is as follows:

- Mr. John Nichols - 00:00
- Ms. Pamela K. Bergman - 00:00
- Mr. Allen J. Halm - 03:06

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:

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MR. JOHN NICHOLS and MS. PAMELA K. BERGMAN,
Attorneys for Petitioner;
MR. ALLEN J. HALM, Attorney for Respondent.

I further certify that I am neither counsel for,
related to, nor employed by any of the parties in the
action in which this proceeding was taken, and
further that I am not financially or otherwise
interested in the outcome of the action.

Further certification requirements pursuant to
Rule 203 of TRCP will be certified to after they have
occurred.

Certified to by me this 3rd day
of July, 2001.

Sharon L. McDonald

SHARON L. MCDONALD, Texas CSR 5423
Expiration Date: 12/31/01
P.O. Box 293297
Kerrville, Texas 78029-3297
(830) 895-2477

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FURTHER CERTIFICATION UNDER RULE 203,
TEXAS RULES OF CIVIL PROCEDURE

The original deposition was / was not returned to the deposition officer on Aug. 3rd, 2001;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Allen J. Halm, Custodial Attorney;

That \$ 523.⁴⁰ is the deposition officer's charges to the Respondent for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this 6th day of August, 2001.

SMCDONALD

SHARON L. MCDONALD, Texas CSR 5423
Expiration Date: 12/31/01
P.O. Box 293297
Kerrville, Texas 78029-3297
(830) 895-2477

CHANGES AND SIGNATURE

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PAGE	LINE	CHANGE	REASON
4	15	THE QUESTIONING ATTORNEY	MR. HALM WAS ASKING QUESTIONS NOT MR. NICHOLS
1	3	SPELLING OF MIDDLE NAME TO ANNE	CONSISTENTLY MISPELLED
10	1	INSERTED → ON THE AFTER THE WORD HIM	IT WAS LEFT OUT

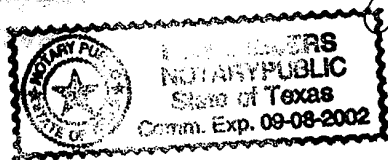
I, AVIAN A. BIEDERMANN, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

Avian A. Biedermann
AVIAN A. BIEDERMANN

THE STATE OF TEXAS)
COUNTY OF GILLESPIE)

BEFORE ME, May E. Eilers,
on this day personally appeared AVIAN A. BIEDERMANN,
known to me (or proved to me under oath or through
Drew's License,) to be the person whose name is
subscribed to the foregoing instrument, and
acknowledged to me that they executed the same for
purposes and consideration therein expressed.

Given under my hand and seal of office
this the 19th day of July, 2001.



May E. Eilers
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

COPIES TO ATTY. A.J. Halm
ATTY. J. Nichols
9-14-01
m.m.

GMA COURT REPORTING
P. O. BOX 293297
KERRVILLE, TX 78029-3297
(830) 895-2477 FAX (830) 990-4126

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NO. 9284

IN THE MATTER OF)
THE MARRIAGE OF)
AVIAN ANN BIEDERMANN)
AND)
KENNETH KYLE BIEDERMANN)
AND IN THE INTERESTS OF)
KYL A RAE BIEDERMANN,)
EMILY LAINE BIEDERMANN,)
LOREN NOEL BIEDERMANN)
AND DANA TRUE BIEDERMANN,)
MINOR CHILDREN.)

IN THE DISTRICT COURT

FILED
At 11:13 O'clock A.M.
GILLESPIE COUNTY, TEXAS

SEP 13 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
2167H JUDICIAL DISTRICT

REPORTER'S CERTIFICATION

ORAL DEPOSITION OF AVIAN A. BIEDERMANN

VOLUME 2

JUNE 16, 2001

I, Sharon L. McDonald, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, AVIAN A. BIEDERMANN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on July 3rd, 2001, to the witness or to the attorney for the witness for examination, signature, and return to me by July 23rd, 2001;

That the amount of time used by each party at the deposition is as follows:

- Mr. John Nichols - 00:00
- Ms. Pamela K. Bergman - 01:30
- Mr. Allen J. Halm - 02:38

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:

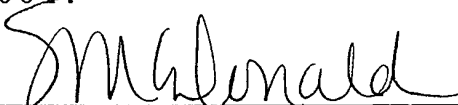
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MR. JOHN NICHOLS and MS. PAMELA K. BERGMAN,
Attorneys for Petitioner;
MR. ALLEN J. HALM, Attorney for Respondent.

I further certify that I am neither counsel for,
related to, nor employed by any of the parties in the
action in which this proceeding was taken, and
further that I am not financially or otherwise
interested in the outcome of the action.

Further certification requirements pursuant to
Rule 203 of TRCP will be certified to after they have
occurred.

Certified to by me this 3rd day
of July, 2001



SHARON L. MCDONALD, Texas CSR 5423
Expiration Date: 12/31/01
P.O. Box 293297
Kerrville, Texas 78029-3297
(830) 895-2477

FURTHER CERTIFICATION UNDER RULE 203,
TEXAS RULES OF CIVIL PROCEDURE

The original deposition ~~was~~ was not returned to the deposition officer on Aug. 3rd, 2001;

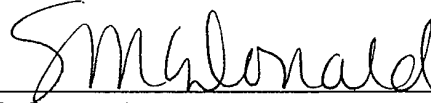
If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Allen J. Halm, Custodial Attorney;

That \$ 751.²⁵ is the deposition officer's charges to the Respondent for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this 6th day
of August, 2001.



SHARON L. MCDONALD, Texas CSR 5423
Expiration Date: 12/31/01
P.O. Box 293297
Kerrville, Texas 78029-3297
(830) 895-2477

GMA COURT REPORTING

P. O. BOX 293297

KERRVILLE, TX 78029-3297

(830) 895-2477 FAX (830) 990-4126

CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON
121	16	AMOUNT OF MONEY BORROWED.	AMOUNT WAS \$6,600.00
195	13	KYLES TO KYLA'S	NOT \$2,000.00 THIS WAS REFERRING TO KYLA'S BEHAVIOR

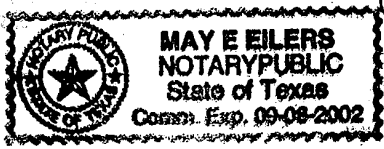
I, AVIAN A. BIEDERMANN, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

Avian A. Biedermann
 AVIAN A. BIEDERMANN

THE STATE OF TEXAS)
 COUNTY OF GILLESPIE)

BEFORE ME, May E. Eilers,
 on this day personally appeared AVIAN A. BIEDERMANN,
 known to me (or proved to me under oath or through
Driver's license,) to be the person whose name is
 subscribed to the foregoing instrument, and
 acknowledged to me that they executed the same for
 purposes and consideration therein expressed.

Given under my hand and seal of office
 this the 19th day of July, 2001.



May E. Eilers
 NOTARY PUBLIC IN AND FOR
 THE STATE OF TEXAS

COPIES TO ATTY. A.J. Halm
ATTY. J. Nichols
9-14-01
m.m.

GMA COURT REPORTING
 P. O. BOX 293297
 KERRVILLE, TX 78029-3297
 (830) 895-2477 FAX (830) 990-4126

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NO. 9284

IN THE MATTER OF)
THE MARRIAGE OF)
AVIAN ANN BIEDERMANN)
AND)
KENNETH KYLE BIEDERMANN)
AND IN THE INTERESTS OF)
KYL A RAE BIEDERMANN,)
EMILY LAINE BIEDERMANN,)
LOREN NOEL BIEDERMANN)
AND DANA TRUE BIEDERMANN,)
MINOR CHILDREN.)

IN THE DISTRICT COURT
FILED
At 11:40 o'clock A.M
GILLESPIE COUNTY, TEXAS
SEP 13 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By: Melody M... Dep.
216TH JUDICIAL DISTRICT

REPORTER'S CERTIFICATION

ORAL DEPOSITION OF TARA F. STARK

JUNE 16, 2001

I, Sharon L. McDonald, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, TARA F. STARK, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on July 3rd, 2001, to the witness or to the attorney for the witness for examination, signature, and return to me by July 23rd, 2001;

That the amount of time used by each party at the deposition is as follows:

- Mr. John Nichols - 00:14
- Ms. Pamela K. Bergman - 00:00
- Mr. Allen J. Halm - 00:31

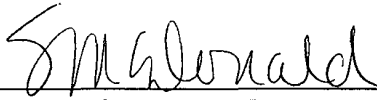
That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:

1 MR. JOHN NICHOLS and MS. PAMELA K. BERGMAN,
Attorneys for Petitioner;
2 MR. ALLEN J. HALM, Attorney for Respondent.

3 I further certify that I am neither counsel for,
related to, nor employed by any of the parties in the
4 action in which this proceeding was taken, and
further that I am not financially or otherwise
5 interested in the outcome of the action.

6 Further certification requirements pursuant to
Rule 203 of TRCP will be certified to after they have
7 occurred.

8 Certified to by me this 3rd day
9 of July, 2001.

10 
11 SHARON L. MCDONALD, Texas CSR 5423
Expiration Date: 12/31/01
12 P.O. Box 293297
Kerrville, Texas 78029-3297
13 (830) 895-2477

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GMA COURT REPORTING

P. O. BOX 293297
KERRVILLE, TX 78029-3297
(830) 895-2477 FAX (830) 990-4126

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FURTHER CERTIFICATION UNDER RULE 203,
TEXAS RULES OF CIVIL PROCEDURE

The original deposition was not returned to the deposition officer on Aug. 3rd, 2001;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Allen J. Halm, Custodial Attorney;

That \$ 174.⁶⁵ is the deposition officer's charges to the Respondent for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this 6th day of August, 2001.

SMCDONALD

SHARON L. MCDONALD, Texas CSR 5423
Expiration Date: 12/31/01
P.O. Box 293297
Kerrville, Texas 78029-3297
(830) 895-2477

CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON
15	5	SEAN CROW TO SHORN CROWE HEATHER CROW TO HEATHER CROWE	MISPELLED MISPELLED
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I, TARA F. STARK, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

Tara F. Stark

TARA F. STARK

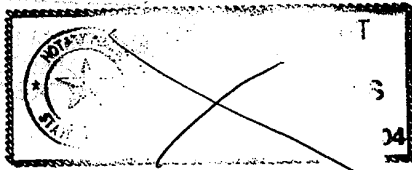
THE STATE OF TEXAS)

COUNTY OF Gillespie)

BEFORE ME, Christi Wendt,

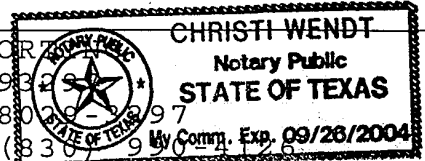
on this day personally appeared TARA F. STARK, known to me (or proved to me under oath or through _____,) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for purposes and consideration therein expressed.

Given under my hand and seal of office this the 20th day of July, 2001.



Christi Wendt

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS



COPIES TO *Atty. A.S. Halm*
Atty. J. Nichols
9-14-01
m.m.

GMA COURT REPORTERS
P. O. BOX 2932
KERRVILLE, TX 78029-0932
(830) 895-2477 FAX (830) 895-2478

71100016
FILED
At 10:50 o'clock A.M.

NO. 9284

JUN 25 2001

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIDERMANN

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IN THE DISTRICT COURT
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By: [Signature] Clerk
[Signature] Deputy
GILLESPIE COUNTY, TEXAS

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIDERMANN, MINOR
CHILDREN

216TH JUDICIAL DISTRICT

**MOTION TO MODIFY TEMPORARY ORDERS, IMPOSE SANCTIONS
PURSUANT TO TRCP RULE 13, AND TO CHARACTERIZE PROPERTY**

This Motion to Modify Temporary Orders, Impose Sanctions Pursuant to TRCP Rule 13, and to Characterize Property is brought by KENNETH KYLE BIEDERMANN, Movant.

I.

Movant, KENNETH KYLE BIEDERMANN is a resident of Fredericksburg, Gillespie County, Texas.

Respondent, AVIAN ANN BIEDERMANN resides at 110 West Hackberry Street, Fredericksburg, Gillespie County, Texas 78624.

No service is necessary at this time.

II.

On December 18, 2000, an Original Petition for Divorce with attached Temporary Restraining Order was filed by Avian Ann Biedermann. The Temporary Restraining

Order was a mutual restraint upon the actions of both the petitioner and respondent signed by Presiding Judge Stephen Ables. Hearing on the order was set for January 2, 2001.

Mediation was ordered by this Court and mediation was attempted on February 19, 2001. A Mediation Agreement was formulated with the temporary orders to expire on March 23, 2001. This document was read into the Court's record on February 20, 2001.

Another attempt at mediation was made on March 22, 2001, with no agreement being reached. On March 23, 2001, Movant appeared before this Court on his Motion to Enforce the mutual restraining order and during the course of that hearing agreed to extend the temporary orders arising out of the earlier mediation until the agreed court date of May 14-15, 2001, despite there being no setting on those orders. Petitioner's attorneys were directed to prepare the mediation agreement and reduce it to enforceable language.

However, in the interim, by order of this Court, Petitioner's request for a continuance was granted and signed on April 16, 2001. The new date set for trial is now August 15-16, 2001.

On May 14, 2001, Movant's Motion for Modification of Temporary Orders was presented to this Court. Both parties agreed to changes and entered into a Rule 11 agreement as to certain terms and conditions of the temporary orders. However, on the issue of temporary support, there was no resolution and pursuant to the agreed orders, "If an agreement [as to support] is not reached within three weeks of entry of this Rule 11 Agreement, either party shall be allowed to set the issue for hearing.

On the same date, AVIAN ANN BIEDERMANN filed her First Amended Petition in which she sought to have BL&H, Inc., d/b/a/ Biedermann's Ace Hardware involved as a party and as such to be placed in receivership and to have company indebtedness declared a nullity. KENNETH KYLE BIEDERMANN filed an answer and request for Rule13 sanctions as a result of this action.

III.

Because at the time that KENNETH KYLE BIEDERMANN, Movant, entered into the mediated agreement of February 19, 2001, and the agreed extension on March 23, 2001, he believed that a final resolution was imminent, the circumstances have changed and the continuance granted has led to a need to modify those orders. In addition, pursuant to the Rule 11 Agreement, if there was no agreement in this area, either party could seek redress from this Court." Movant chooses to do so.

IV.

Since February 19, 2001, KENNETH KYLE BIEDERMANN, Movant, has vacated the house and pursuant to the mediation agreement has continued to make the house payment (\$979.00 per month), the home equity loan payment (\$292.00 per month), provided family health insurance through his business (\$435.00 per month), and paid the non-telephone utilities (approximately \$150.00 per month) at the home occupied by respondent. He also provides his wife with \$50.00 per month of gasoline charges at a local filling station where he keeps an open account. His net monthly income is only \$1780.00. Not including the family health insurance and gasoline, this amount of support

to maintain the household represents 79.8% of his disposable income. KENNETH KYLE BIEDERMANN agreed to such a high level of support because he was assured that a trial date of May 14, 2001, had been set as part of the mediation agreement and that such support would be adjusted after trial. When the opposing party requested and received a continuance, the circumstances materially changed and that change requires the modification of the Temporary Orders.

Movant requests that the support provided in the Temporary Orders be terminated for the following reasons:

1. AVIAN ANN BIEDERMANN reports income of \$1940.25 per month as a self-employed hair stylist. (See CASA Report, page 9)
2. AVIAN ANN BIEDERMANN purchased an automobile and incurred debt that was unnecessary. (See Motion to Enforce)
3. AVIAN ANN BIEDERMANN agreed to delay the agreed upon court date of May 14-15, 2001.
4. AVIAN ANN BIEDERMANN has not maintained the home and yard. Movant requests that he be allowed to move back into the home, make necessary repairs, maintain the premises, and prepare the home to be marketed during the prime selling season.
5. AVIAN ANN BIEDERMANN has had exclusive possession of the home, furnishings and personal property since February 19, 2001. She has refused to allow KENNETH KYLE BIEDERMANN to access his possessions or to even enter the house. Movant requests that the this Court order that KENNETH KYLE BIEDERMANN have access to the house on a reasonable basis so that

his personal property can be secured, so that he can get necessary financial records and so that he can get items such as tools that are necessary to his business. In the alternative, KENNETH KYLE BIEDERMANN requests that he be awarded exclusive possession of the house until date of trial.

V.

Movant requests that the present orders relating to possession of the children and access of the children be modified because they have become unworkable and are no longer in the best interest of the children. The children are now out of school and will have more time to spend with their parents. The current Temporary Order allows KENNETH KYLE BIEDERMANN visitation beginning at 5 p.m. on Saturday and returning the children to school on Monday. Movant requests that the Court grant him additional time during the week to have visitation and custody of his children.

The agreed order addressed telephonic contact, but to this point, AVIAN ANN BIEDERMANN has continued to deny KENNETH KYLE BIEDERMANN reasonable telephonic contact with his children and they with him on numerous occasions.

The agreed order addressed extended visitation times for KENNETH KYLE BIEDERMANN's vacation trip. AVIAN ANN BIEDERMANN has refused to inform Mr. Biedermann of her proposed plans for her extended trip with the children.

Movant requests this Court to modify its Temporary Orders as follows:

1. KENNETH KYLE BIEDERMANN is to have weekly visitation with the children from Friday at 5 p.m. until Monday at 8 a.m. and on Tuesday evenings from 6 p.m. until 8:30 p.m. unless mutually agreed to by the parties.

2. The children will be allowed to initiate one phone call per day at anytime to the parent not in possession of the children. Likewise, the parent not in possession may initiate one phone call to the children between the hours of 7 p.m. and 8:30 p.m. No phone call should last more than fifteen minutes and neither parent is to monitor, record, or inhibit the phone conversations.

VI.

KENNETH KYLE BIEDERMANN, as president of BL&H, Inc. d/b/a Biedermann's Ace Hardware, filed his answer to his wife's First Amended Petition in which she sought to place BL&H in receivership despite having no ownership interest in the corporation. Pursuant to Rule 13, Texas Rules of Civil Procedure, Mr. Biedermann asks this Court to grant hearing on his request for imposition of sanctions for filing a groundless lawsuit brought for the purpose of harassment.

Further, Mr. Biedermann requests that the Court characterize the property that was the subject of this additional action as Mr. Biedermann's separate property through gift.

VII.

Movant prays the Court grant the Motion to Modify Temporary Orders, to impose sanctions pursuant to Rule 13, TRCP, and to characterize BL&H, Inc., as separate property of KENNETH KYLE BIEDERMANN.

Respectfully submitted,

The Law Offices of A. J. Halm

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
AVIAN ANN BIEDERMANN	§	
AND	§	
KENNETH KYLE BIEDERMANN	§	
	§	GILLESPIE COUNTY, T E X A S
AND IN THE INTERESTS OF	§	
KYLA RAE BIEDERMANN,	§	
EMILY LAINE BIEDERMANN,	§	
LOREN NOEL BIEDERMANN AND	§	
DANA TRUE BIEDERMANN, MINOR	§	
CHILDREN	§	216TH JUDICIAL DISTRICT

**RESPONSE TO KENNETH KYLE BIEDERMANN'S
REQUEST FOR RULE 13 SANCTIONS AND
FINDING OF SEPARATE PROPERTY**

Avian Ann Biedermann, Petitioner, responds to the Request for Sanctions pursuant to Rule 13 of the Texas Rules of Civil Procedure and request for finding of separate property by Kenneth Kyle Biedermann show unto the Court as follows:

1. The Request For Sanctions.

Kenneth Kyle Biedermann's request for sanctions is contained in Appendix 1 styled "Motion to Modify Temporary Orders, Impose Sanctions Pursuant to TRCP Rule 13 And To Characterize Property."

2. Basis For Request for Sanctions.

Kenneth Kyle Biedermann seeks sanctions against Avian Ann Biedermann because Avian Ann Biedermann has sought a receivership of Defendant, B. L. & H. Inc. d/b/a Biedermann's Ace Hardware.

FILED
At 8:20 o'clock A.M

JUL 05 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By: Barbara Meyer
Deputy

3. Request For Separate Property Finding.

Kenneth Kyle Biedermann also seeks to have this court prematurely, without a request for declaratory judgment or a motion for summary judgment, to find as a matter of law that B. L. & H. Inc. d/b/a Biedermann's Ace Hardware is his separate property.

4. Response To Request For Receivership

Respondent, Kenneth Kyle Biedermann, has produced tax returns for B. L. & H. Inc. d/b/a Biedermann's Ace Hardware showing receipts of cash to B. L. & H. Inc., which is a Subchapter S corporation, as follows:

1993	\$ missing	→ NON PRESENTED - Kenneth's 10% of \$ 100,000
1994	\$866,398.50	
1995	\$856,508.13	
1996	\$772,523.02	
1997	\$605,564.03	
1998	\$601,545.30	
1999	\$616,186.00	
2000	\$784,576.00	

At the same time Respondent, Kenneth Kyle Biedermann, has artificially maintained a salary as follows:

1993	\$19,500.00
1994	\$26,400.00
1995	\$22,850.00
1996	\$24,150.00
1997	\$ missing
1998	\$ missing
1999	\$22,100.00
2000	\$ missing

Additionally, Tara Stark, Petitioner's sister, worked at Biedermann's Ace Hardware from 1991 through 1998. Tara Stark testified, upon oral deposition, that Kenneth Kyle Biedermann was a "poor owner-manager" who was frequently rude to customers and absent from the store on frequent occasions.

- A. §7.001 of the Tex. Fam. Code grants a trial court broad authority to divide marital property in a manner it deems just and right upon the dissolution of marriage. Tex. Fam. Code Ann. §7.001 (Vernon 1998); *Vannerson v. Vannerson*, 857 S.W.2d 659, 673 (Tex.App.-Houston [1st

Dist.] 1993, writ den'd); *Young v. Young*, 765 S.W.2d 440, 444 (Tex.App.-Dallas 1998, no writ). That broad authority includes the power to enlist the aid of a receiver to effectuate the trial court's orders and judgments. *Walston v. Walston*, 971 S.W.2d 687, 692-93 (Tex.App.-Waco 1998, pet. denied); *Vannerson v. Vannerson*, 857 S.W.2d at 673; *Young v. Young*, 765 S.W.2d at 444.

- B. Texas Civil Practice and Remedies Code §64.001 governs the appointments of receivers in marriage dissolution cases when third parties or companies do not have an interest in the property subject to a receivership; rather, the court's have held that §7.001 of the Tex. Fam. Code governs. See *Walston v. Walston*, 971 S.W.2d 692-693 (holding that §7.001's predecessor authorizes a trial court to appoint a receiver for selling property, as necessary, to carry out the trial court's orders and judgments); *Vannerson v. Vannerson*, 857 S.W.2d at 673; (holding that §64.001 of the Civil Practice and Remedies Code does not govern the appointment of receiver over property when it is divided upon divorce, the predecessor of §7.001 of the Tex. Fam. Code controls); *Young v. Young*, 765 S.W.2d at 444 (holding that §64.001 of the Civil Practice and Remedies Code does not govern the appointment of receiver over property when it is divided upon divorce, the predecessor of §7.001 of the Tex. Fam. Code controls); *North Side Bank v. Wachendorfer*, 585 S.W.2d 789, 792 (Tex.Civ.App.-Houston [1st Dist.] 1979, no writ) (holding that under the statutes governing family courts, a family court has broad power to appoint a receiver where it is necessary, but this power is limited by §64.001 of the Civil Practice and Remedies Code when a receiver is sought by the owner of marital estate against a third-party creditor); *Elliott v. Elliott*, 422 S.W.2d 757, 758-759 (Tex.Civ.App.-Fort Worth 1967, writ dism'd w.o.j.) (stating that under the statutory provisions governing family courts, where a court has full knowledge concerning the parties and their property, it may appoint a receiver, even without any application therefor, and without notice or hearing). Thus, in this case which involves only property of the parties and does not involve the interest of creditors or mortgagors, §7.001 governs.

5. Response To Request For Declaration Of Separate Property

Until there is a finding by declaratory judgment, summary judgment, or trial on the merits as to the character of property:

- A. Tex. Fam. Code §3.003 [presumption of community property] provides:
- (a) property possessed by either spouse during or on dissolution of marriage is *presumed to be community property*;
 - (b) the degree of proof necessary to establish that property is separate property is *clearing and convincing evidence*. This has been the law in Texas since 1840. Petitioner and Respondent were married in 1989. Title to B. L. & H. Inc. d/b/a Biedermann's Ace Hardware was acquired by Petitioner and Respondent on May 5, 1994.
- B. Tex. Fam. Code §3.002 [community property] provides that community property consists of the property, other than separate property, acquired by either spouse during the marriage. Title to B. L. & H. Inc. d/b/a Biedermann's Ace Hardware occurred during marriage.
- C. The document transferring ownership is a share certificate, attached as Appendix 2, which has no "significant recital" indicating that such transfer was a gift to Kenneth Kyle Biedermann.
- D. A gift is defined as a transfer of property made voluntarily and gratuitously, *without consideration*. *Ellebracht v. Ellebracht*, 735 S.W.2d 658, 652 (Tex. App.-Austin 1987, no writ). The burden of proving a gift is on the party claiming the gift was made *Id.* Kenneth Kyle Biedermann, Respondent, and his father, Kenneth P. Biedermann, have testified and confirmed under oath that one of the conditions [consideration] of transfer of the share certificate was Respondent, Kenneth Kyle Biedermann's, assumption of all of the outstanding indebtedness of B. L. & H. Inc. d/b/a Biedermann's Ace Hardware, which included the principal balance of \$30,000.00 on a Small Business Administration (SBA) loan financed through Bank One in Fredericksburg, Texas. Still further, Respondent, Kenneth Kyle Biedermann, testified, upon oral deposition under oath, that contemporaneous with the transfer of stock he made a loan in his name with the Small Business Administration, through Bank One, in the amount of \$100,000.00. \$30,000.00 of this \$100,000.00 loan was used to retire the prior Small Business Administration loan outstanding in his father's name. There has been no evidence presented which shows that Small Business Administration or Bank One in Fredericksburg, Texas agreed to look solely to Kenneth Kyle Biedermann's separate estate for repayment. On the contrary, Kenneth Kyle Biedermann obligated the community estate to the extent of \$100,000.00 in 1994 in order to comply with the conditions imposed by Kenneth P. Biedermann for transfer of this stock. This factual testimony

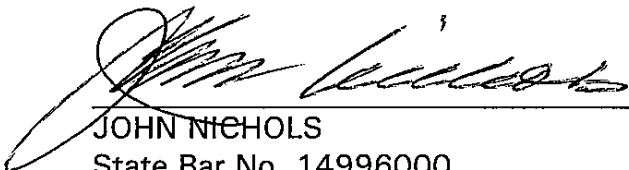
is consistent with the expressed recitation on the stock certificate, among other things, that the stock was sold [*sell*] to Kenneth Kyle Biedermann.

- E. Where an asset is acquired on credit, the property so acquired will take on the character of the credit. *Cockerham v. Cockerham*, 527 S.W.2d 162 (Tex. 1975) and *Broussard v. Tian*, 295 S.W.2d 405 (Tex. 1956). Clearly the community estate is obligated on the credit transaction absent proof that the lender is looking solely to the separate property estate of the borrower for repayment. Still further, the inception of title to B. L. & H. Inc. d/b/a Biedermann's Ace Hardware occurred in 1994. Property is characterized as "separate" or "community" at the time of inception of title. *Saldana v. Saldana*, 791 S.W.2d 316 (Tex. App.-Corpus Christi 1990, no writ). Under the inception of title doctrine, the character of property is fixed at the time of acquisition. *Colden v. Alexander*, 171 S.W.2d 328 (Tex. 1943).

6. Prayer

Petitioner, Avian Ann Biedermann, prays that this court deny the motion for sanctions and the request for declaration that B. L. H. Inc. d/b/a Ace Hardware is the separate property of Respondent, Kenneth Kyle Biedermann.

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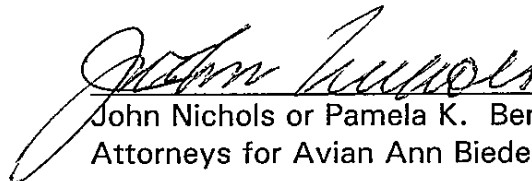
713/-654-0706 Fax

Attorneys for Avian Ann Biedermann

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on the 7 day of June, 2001, as follows:

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John Nichols or Pamela K. Bergman
Attorneys for Avian Ann Biedermann

REPORTER'S RECORD

ORIGINAL

TRIAL COURT CAUSE NO. 9284

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IN THE MATTER OF	X	IN THE DISTRICT COURT
THE MARRIAGE OF	X	
	X	
AVIAN ANN BIEDERMANN	X	
AND	X	
KENNETH KYLE BIEDERMANN	X	216TH JUDICIAL DISTRICT
	X	
	X	
AND IN THE INTEREST OF	X	
KYLA RAE BIEDERMANN,	X	
EMILY LAINE BIEDERMANN,	X	
LOREN NOEL BIEDERMANN,	X	
AND DANA TRUE BIEDERMANN,	X	
MINOR CHILDREN	X	GILLESPIE COUNTY, TEXAS

* * * * *

MODIFICATION HEARING

* * * * *

On Thursday, the 6th day of July, 2001, from 9:00 o'clock a.m. to 3:00 o'clock p.m., the following proceedings came on to be heard in the above-entitled and numbered cause; before the

Honorable Charles Sherrill, Senior Judge Presiding, held in Fredericksburg, Gillespie County, Texas:

FILED
At 10:44 O'clock AM

JUL 26 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By [Signature]

Proceedings reported by computerized stenotype machine, valid if it bears my raised seal.

Paula R. Loetz
CSR No. 1493

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Attorney Ad Litem for the Minor Children

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I N D E X

<u>JULY 6, 2001</u>		<u>Page</u>	
Proceedings		4	
Arguments of Counsel			
By Mr. Nichols		4	
By Mr. Halm		14	
Ruling of the Court		15	
<u>WITNESSES:</u>			
	Voir Dire	Direct	Cross
KENNETH KYLE BIEDERMANN		19	34
			69
		74	77
AVIAN A. BIEDERMANN		93	
Agreement Entered			101
Hearing Adjourned			115
Court Reporter's Certificate			116
Key Word Index			117

1 (In open court, Ms. Bergman not
2 present:)

3 THE COURT: You can just keep your
4 seat, keep your seat.

5 (Brief delay.)

6 THE COURT: Gentlemen, are we ready,
7 or is your client going to be here, sir?

8 MR. NICHOLS: Your Honor, may we
9 approach just a second?

10 THE COURT: Sure.

11 (Discussion off the record.)

12 THE COURT: All right, I think we have
13 a question about the determinations of separate
14 property, either - I mean, of the hardware store. Is
15 that it, Mr. Halm?

16 MR. HALM: Yes, Your Honor, that's
17 correct.

18 THE COURT: If you would like to go
19 forward, then, gentlemen, you may.

20 MR. NICHOLS: All right. Your Honor,
21 Mr. Halm has requested Rule 13 sanctions against my
22 client for her amended pleading wherein she requested
23 that BL&H d/b/a Biedermann's Ace Hardware be placed
24 in receivership, and, additionally, he's asking this
25 Court to rule without any formal Motion for Summary

1 Judgment, Declaratory Judgment, that BL&H, Inc. is
2 Mr. Kyle Biedermann's separate property.

3 We have prepared and filed a response
4 to that and I'm prepared to go forward this morning
5 with my legal argument as to why this Court should
6 not rule preliminarily without any hearing, without
7 any trial, without any formal Motion for Summary
8 Judgment, Declaratory Judgment, just rule as a matter
9 of law that that's his separate property.

10 If the Court would allow me to
11 proceed?

12 THE COURT: You may proceed, please,
13 sir.

14 MR. NICHOLS: Your Honor, I have, and
15 it should be before the Court this morning ---

16 THE COURT: All right.

17 MR. NICHOLS: --- a response to the
18 Rule 13 request for sanctions. If the Court would
19 like to follow along, I request that the Court look
20 at page 2, and I will start on paragraph 4 on the
21 request - or the response, the response to the
22 request for receivership.

23 Mr. Biedermann, through his attorneys,
24 have turned over to us tax returns for BL&H, Inc. for
25 the years '94 through the year 2000. This morning I

1 received from Mr. Biedermann through his counsel the
2 1993 missing return for BL&H, Inc.

3 BL&H, Inc. is a Subchapter S
4 Corporation designated by Mr. Kenneth P. Biedermann
5 when he took over the operation of Stein Lumber
6 Company back in 1986, and there was an election as to
7 Sub S Corporation; and as the Court well knows, you
8 pass through profits and losses to the individual
9 and, like a partnership, there are K-1s issued at the
10 end of the year which indicate percentage of
11 ownership.

12 Now, one of the things that Mr. Kyle
13 Biedermann has said throughout is that this
14 Biedermann's Ace Hardware is not making any money,
15 he's going in the hole each month, and so on and so
16 forth. Well, a plain view of this operation shows
17 that he has been as high as \$866,000 of receipts each
18 year through 2000, \$784,576, yet he pulls out less
19 than \$1,000 a month that he reports on his taxes.

20 Now, what we've been able to determine
21 is that while he shows this and says he is not making
22 any money, he has been running a great number of
23 perks through the corporation, the cars, gasoline,
24 groceries, credit card bills, a number of items that
25 really should reflect family income to the community;

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1 however, he has consistently said, "We're not making
2 any money" and he's even asked, with these kind of
3 receipts - and he's in a boom year this
4 year - that his child support, family support be
5 lowered, this in the face of him taking a vacation to
6 Florida and taking the kids to Fiesta World and
7 spending community monies when, at the same time, he
8 says he doesn't have any.

9 Now, I have requested a receivership
10 should the evidence bear this out and should he stick
11 to his testimony in the trial on the merits that this
12 company is not making any money.

13 Now, I received a telephone call from
14 Mr. Halm right after I filed this. Now, I don't know
15 if Mr. Halm was being facetious or not, but he said
16 that he, his client, invited the Court to go ahead
17 and appoint a Receiver, that they would love for this
18 to take place. From his filing of the Rule 13
19 sanctions, I take it that he was being facetious with
20 me, but I took him at the time of being serious, and
21 it seems from whatever we - the stuff that we've been
22 able to determine here that, in fact, a receivership
23 may be an appropriate vehicle, especially if this
24 Court makes findings that Mr. Kyle Biedermann has
25 operated this BL&H, Inc. as his alter ego.

1 We have those allegations and those
2 pleadings on file and should we sustain our burden of
3 proof in that pleading, then the Court could
4 dismantle this corporation and part it out or do an
5 asset sale, or it if this Court finds that it is, in
6 fact, community property, this Court could appoint a
7 Receiver, order it sold, give Mrs. Biedermann part of
8 the stock in the corporation, and it can do a number
9 of things, as the Court well knows, under its equity
10 powers in a family law case.

11 So we think that the state of the
12 proof at this point is sufficient foundation for me
13 to make an allegation.

14 Now, part of the problem you have in
15 making an allegation of a request for receivership at
16 a later date is the other side says, "We had no
17 notice of that. It's too late. It's an
18 eleventh-hour pleading," and so on and so forth,
19 "and, therefore, it should be stricken," so I'm on
20 the horns of a dilemma. I have evidence that seems
21 to indicate that a receivership would be
22 appropriate. On the other hand, if I wait until the
23 trial on the merits and the evidence shows that a
24 receivership is necessary, then I think I've probably
25 waited too late to say, "Now I need a receivership,"

1 they claim surprise and ask for a continuance, and so
2 on and so forth. So that's the reason why I did
3 that.

4 I think rule - excuse me - Section
5 7.001 of the Texas Family Code and the cases under
6 that seem to indicate that Texas Family Code Section
7 7.001 applies in receivership matters between a
8 Petitioner and a Respondent, which is all we have
9 here. We have BL&H, Inc. because we have the alter
10 ego allegation in the request for receivership, but
11 we have no third party creditors out there that have
12 intervened in this case. Therefore, I think that
13 7.001 applies as opposed to Texas Civil Practice and
14 Remedies Code 64.001. There's some nuances between
15 the two statutes, but suffice it to say, this Court
16 has full equity powers and legal powers to appoint a
17 Receiver, and that's just one of the things that the
18 Court can do in a final trial on the merits.

19 Now, as to the request for a
20 declaration of separate property, this Court has
21 handled thousands of family law cases over the years
22 and years that the Court has - Your Honor has been on
23 the bench. The Court well knows that there - under
24 Texas Family Code Section 3.003, there is a
25 presumption of community property and that this

1 presumption of community property can only be
2 rebutted by an affirmative claim by the person
3 resisting that and proof by clear and convincing
4 evidence that it is separate property.

5 Now, the Texas Family Code looks and
6 talks about separate property - community property,
7 anything acquired during the marriage, and this
8 Biedermann's Ace Hardware was acquired on May the
9 5th, 1994. These parties were married in 1989, so it
10 was acquired during the marriage and presumptively is
11 community property.

12 Now, also, the lawyer that was
13 assisting Mr. Kenneth P. Biedermann in the transfer
14 of this was a Mr. Patrick Dooley, who I understand
15 has passed away ---

16 THE COURT: Yes.

17 MR. NICHOLS: --- and is no longer
18 alive. However, in the share certificate that was
19 issued to Kyle Biedermann in 1994, on the back of it
20 it says "For Value Received" - that connotes
21 consideration - "the Undersigned hereby sells,
22 assigns and transfers unto Kenneth Kyle Biedermann,"
23 so that would connote a sale.

24 When we took Kyle Biedermann's
25 deposition and his dad's deposition, they both

1 confirmed that there were conditions upon Kyle
2 Biedermann taking over Biedermann's Ace Hardware and
3 one of the conditions or considerations was that Kyle
4 Biedermann would get his dad off of an SBA loan with
5 Security State Bank and that Kyle Biedermann would
6 obligate himself and BL&H, Inc. to an additional
7 loan - pay off the old loan, get Mr. Kenneth P.
8 Biedermann off that old note and then him, along with
9 his wife since it was a credit transaction and there
10 was no significant recitals in there by Bank One that
11 they look solely to his separate estate for
12 repayment, that became a credit transition and is
13 community property.

14 Now, it is interesting to note that
15 this is all confirmed in an additional piece of
16 information that was handed to us today, that of the
17 SBA application by Kyle Biedermann. It says the loan
18 request and how much and what for and why is it
19 needed, says, "The requested \$100,000 will be used to
20 pay off debt and purchase inventories, 40,000 will be
21 used to pay off an SBA guaranty loan for Security
22 State Bank and the remainder will be used to purchase
23 inventory," so it has all the trappings of a credit
24 transaction. The stock transfer which was handled by
25 Mr. Dooley says, "For value received, sell, assign,

1 transfer." The sworn testimony of Kyle Biedermann
2 and his father say credit transaction because of the
3 consideration of taking over the note. Everything
4 seems to smack of a community property transaction.

5 Now, one of the interesting notes
6 about this is that this particular piece of property
7 had a fair market value of over \$40,000. Now,
8 Mr. Kenneth P. Biedermann, the father, testified
9 under oath that he made a two-step gift, made part
10 gift in 1993 and part gift in 1994, and when we
11 looked at the -- and nothing in the stock transfer
12 says it's a part gift in '93 or a part gift in '94.
13 It says May the 5th, 1994, 1,000 shares.

14 Now, it's interesting to note that
15 when we filed this, we did not have the 1993
16 corporate return, the 1993 and 1994 corporate returns
17 which would indicate the percentage of the ownership,
18 so that if Mr. Kenneth Kyle(sic) Biedermann, the
19 father, transferred half of the ownership in there to
20 escape, avoid, or otherwise not have to pay gift
21 taxes for a gift that was in excess of the annual
22 gift tax exclusion for he and his wife, then it would
23 be reflected in K-1 that he was a partial owner.
24 Well, we were handed the U.S. Income Tax Return for S
25 Corporation this morning and, interestingly enough,

1 it shows that for the year 1993, Mr. Kenneth P.
2 Biedermann was 100 percent owner of that corporation
3 in 1993, which would support the position that it was
4 a sale for value received, et cetera, in 1994.

5 Now, the SBA loan by Kyle Biedermann,
6 application was made May the 21st, 1994, some two
7 weeks after this transfer, to get this consideration
8 and these conditions met.

9 Now, we looked at the 1994 Subchapter
10 S Corporation BL&H, Inc. tax return, so the K-1s for
11 1994 if, in fact, Mr. Kenneth Biedermann made a
12 transfer of that stock, would show a K-1 partially
13 for Mr. Kenneth P. Biedermann and partially for
14 Kenneth Kyle Biedermann and, sure enough, that's what
15 they show. Mr. Kyle Biedermann had a non-passive
16 pass-through of around \$10,000 and Kenneth P.
17 Biedermann had a non-passive pass-through of an
18 amount just a little bit more than that. That would
19 also support our position that there was no partial
20 gift in '93 and partial gift in '94.

21 We feel that this state of the record
22 and what it would show would - if the Court felt that
23 it could just go ahead and summarily declare a piece
24 of property separate property, that this would
25 certainly create some type of fact issue for the

1 Court to warrant further sworn testimony, so we feel
2 that the Court should deny the request for sanctions
3 against me and my client for the request for a
4 receivership and the request for sanctions - or the
5 request for declaration of separate property based on
6 the record as we have it at this point in time.

7 That concludes my presentation.

8 THE COURT: Mr. Halm.

9 MR. HALM: Your Honor, crucial element
10 in asking for the receivership is that the party
11 seeking the receivership have some type of business
12 interest in that business.

13 The intent of Mr. Kenneth P.
14 Biedermann at the time of the stock transfer was to
15 gift BL&H, Incorporated to his son. There was
16 testimony in deposition to that effect. He is
17 present in the courtroom. If Your Honor will allow
18 it, I will be glad to put on evidentiary affirmation
19 as to the intent of the donor.

20 As to the discrepancies on the tax
21 returns, we, too, have identified that in '93 it
22 should have been a 50 percent rather than 100 percent
23 shown on the K-1. We are prepared, if this goes to
24 trial, to have Kenneth Knopp, who prepared the tax
25 returns, to come in and state, basically, "Yes, that

1 is my mess-up. I was instructed by Kenneth P.
2 Biedermann to make that transfer."

3 It is our position, Your Honor, that
4 this request for receivership was a form of
5 harassment. It is not justified. Mr. Biedermann is
6 actively involved in the business and is doing
7 everything he can to keep it afloat; therefore, and,
8 Your Honor, we - we ask that sanctions be imposed.
9 The sanctions we are seeking are the very minimum.
10 We're asking for attorney's fees for answering this
11 complaint, for the research involved. Total is three
12 hours of time spent.

13 The intent of the donor is. . .

14 (Interruption by court reporter.)

15 MR. HALM: The intent of the donor is
16 determinative here, and Kenneth P. Biedermann is more
17 than willing to testify and has testified in
18 deposition that his intent was to gift the property
19 to his son, Kyle.

20 I have no further, Your Honor.

21 THE COURT: Does the attorney ad litem
22 have any comment at this time?

23 MR. RUDKIN: No, Your Honor, other
24 than it sounds like we have a fact issue to be
25 preserved for trial.

1 THE COURT: All right. The Court is
2 ruling in this manner:

3 First, this matter is reserved for
4 final hearing. The second is that if -- the matter
5 of the possible receivership will be carried along
6 and will not be thrown out for reason that it was
7 filed lately; however, I would comment that this
8 Court's opinion is unless you convenience me by law
9 otherwise, that the request for receivership of a
10 business between husband and wife when it affects the
11 community income could certainly be great.

12 Now, I will say that I feel like
13 there's no question about it, the Court can summarily
14 order a receivership if there's a question about the
15 community income. Now, unless you convenience me to
16 the contrary -- but I'm not threatening at this point
17 to enter into a receivership or such. I am merely
18 stating that I'm going to carry the matter along,
19 and, therefore, I am carrying any sanctions along and
20 so forth. It's this Court's policy always on
21 monetary sanctions or restrictions or so forth to
22 delay such until the final trial, ultimate trial and
23 final settlement.

24 I find that these matters oftentimes
25 result in a help and aid in a settlement instead of

1 causing conflicts, so the Court, itself, is not
2 cutting off any available matters to possibly achieve
3 a settlement.

4 This case is one that should be
5 settled. In other words, I feel like as to the
6 children, I'm glad that all parties have their
7 interest in the children, and that's my primary
8 concern; but along with my primary concern of the
9 children, I look to the income from child support and
10 custody and so forth, so I have to take into
11 consideration all of these matters and I find no -
12 make definitely that I find no frivolous actions at
13 this time by either party, but I do feel like that
14 the Court has inherent power to declare a
15 receivership. If you want to check that out, that's
16 fine, but I believe when a receivership would affect
17 the community income, showing that one spouse is not
18 operating efficiently, I think the Court has right to
19 take proper sanctions to cause that person to operate
20 efficiently, to not be underemployed, but I'm making
21 no finding, no comment as to this particular
22 situation.

23 Let's stand in recess for a few
24 minutes until your colleague gets here. We'll be in
25 recess. There's coffee at the end of the hall.

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1 (Court recessed from 9:29 a.m. to
2 9:59 a.m., Ms. Bergman present.)

3 THE COURT: All right, counsel, are we
4 ready to proceed?

5 MR. HALM: Yes, Your Honor, we are.

6 THE COURT: Fine. I believe we had a
7 Motion for Increased Visitation with the children.

8 MR. HALM: That, along with reduction
9 in the amount of the financial support.

10 THE COURT: All right, thank you.

11 MR. HALM: Your Honor, at this time
12 I'd like to call Mr. Biedermann.

13 THE COURT: All right. If you'd come
14 up, sir. Just go ahead and be seated. If you'd hold
15 up your right hand, sir.

16 (Witness sworn.)

17 THE WITNESS: Yes, I do.

18 THE COURT: Fine. For the purposes
19 the record, if you'd state your name.

20 THE WITNESS: Kenneth Kyle Biedermann.

21 THE COURT: Let me see if we can't get
22 you something. The acoustics in this courtroom are
23 so horrible.

24 (Brief delay.)

25 THE COURT: All right. All right,

1 sir, for the purposes of record, if you'd state your
2 name.

3 THE WITNESS: Yes. Kenneth Kyle
4 Biedermann.

5 THE COURT: All right. Can you hear,
6 counsel?

7 MR. NICHOLS: We can.

8 THE COURT: All right, fine. Thank
9 you. You may proceed, please.

10 KENNETH KYLE BIEDERMANN,
11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HALM:

14 Q. Why, Mr. Biedermann, have you requested
15 this hearing before the Court?

16 A. Well, in February we had agreed to
17 temporary orders since we'd gone through a full day
18 of mediation and didn't come up with any kind of
19 settlement offer or weren't able to receive one, and
20 so in order to try to cooperate and show that I
21 wanted to settle and try to get things moving on
22 this, I agreed to a temporary order of seeing the
23 children a short period of time, but every week,
24 knowing that we had a mediation set 30 days from that
25 time period and then court set another 30 days after

1 that, so 60 days from that. So I knew there was an
2 end and so I agreed to temporary orders, and now it's
3 been so long, I just feel they need to be adjusted.

4 Q. And did your wife and her attorneys request
5 a continuance of that trial date that was set for May
6 14th and 15th?

7 A. Yes, they did.

8 Q. And was it granted?

9 A. Yes, it was.

10 Q. And is that the reason that you're here
11 seeking a change in the temporary orders?

12 A. Yes, and mainly because back in February,
13 the children were still in school and so their time
14 is different now that it is summer. They're off
15 every day, all day long, so I'd like to see the
16 children more often; and since I've been only being
17 seeing them one day a week, Saturday night at 5:00
18 o'clock and then Sunday and Sunday night, I really
19 want to see the girls more; and, besides that, the
20 children's life-style has changed tremendously since
21 I've been out of the house.

22 When I lived in the house, the
23 children would get up with me every day. I would
24 cook them breakfast, get them to school. Days we
25 didn't have school, the same thing. We'd get up

1 early and eat breakfast and do things while my wife
2 didn't participate much, because she was usually
3 sleeping.

4 MS. BERGMAN: Objection, Your Honor.
5 It's narrative, nonresponsive.

6 THE COURT: All right, sustained. So
7 if you will, question-and-answer.

8 THE WITNESS: But the children, the
9 quality of life for the children has changed
10 tremendously since I'm not there, because they ---

11 THE COURT: In other words, sir, the
12 rule of law is that we have to go question-
13 and-answer. In other words, she's invoked that, in
14 other words, which means you will have to hear a
15 specific question and answer only that question.

16 THE WITNESS: Yes, sir.

17 THE COURT: So it's really difficult,
18 I understand, but you need to give the information or
19 want to give the information, and it's difficult
20 sometimes. Just listen to the question and answer
21 only the question.

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you, sir.

24 Q. (BY MR. HALM) Was another reason that you
25 entered into the temporary orders because you wanted

1 to show cooperation?

2 A. Yes, I did.

3 Q. And did you enter into those temporary
4 orders for the reason that you wanted the lives of
5 the children to not be disrupted?

6 A. Hmm, well, I wanted to see them every
7 week. I didn't want to go every other week, and so
8 it's important for me and it's been difficult not to
9 see them every week, so that's -- but to disrupt
10 their lives, once I wasn't in the house, their lives
11 were disrupted.

12 THE COURT: That's fine, sir.

13 Q. (BY MR. HALM) Mr. Biedermann, has there
14 been cooperation between and your wife?

15 A. Unfortunately, there has been very little
16 cooperation. Unfortunately, communication is almost
17 nil. My wife says everything has got to go through
18 her attorneys. I wish we could speak together, but
19 that's not happening.

20 Q. Has she ever denied you telephonic access
21 to the children?

22 A. Many, many, many times. She has not
23 allowed me to talk to the children on many, many
24 days. In fact, we had to go to a hearing last time,
25 because I ---

1 THE COURT: That's fine, sir.

2 Q. (BY MR. HALM) Have you had any periods of
3 visitation other than the time that you were allowed
4 by the Court, which was from Saturday, 5:00 p.m.,
5 until 8:00 a.m. on Monday morning?

6 A. There have been very few occasions where
7 I've gotten an extra day. I went through my calendar
8 and it looks like maybe four times I was able to see
9 them more than my one day, except for the one
10 vacation we were allowed to take, again having to go
11 to the last hearing just to get that two-week
12 vacation.

13 Q. You mentioned a hearing. What was the
14 hearing about right two days before you - or the day
15 that you were to leave for extended Florida vacation?

16 A. Oh, that hearing. Well, that was the
17 hearing over the telephone. You mean, the conference
18 call hearing?

19 Q. Yes.

20 A. Well, I was about to go on my vacation to
21 Florida and there was a - supposedly an outcry from
22 one of my children about them sleeping in the same
23 bed with me without their pajamas on, and so instead
24 of asking any questions of the children, general
25 questions, nothing specific, the children were rushed

1 down to ---

2 MS. BERGMAN: Objection, Your Honor.

3 THE COURT: Yes. In other words,
4 question-and-answer. Please do not volunteer
5 information. Just listen to the question, answer the
6 specific question. You don't need to give any
7 background or such. Listen to the question.

8 THE WITNESS: Well, the question was
9 what happened. Well, we had to go down to a child
10 psychologist and speak to him about the situation.

11 Q. (BY MR. HALM) And who was that that you
12 spoke to?

13 A. Dr. Ferrell.

14 Q. And what was his findings on this
15 particular incident?

16 A. I don't have his exact findings, but it's
17 obvious that he didn't feel that it was justified in
18 not allowing me to go with my children or see my
19 children.

20 Q. In terms of further cooperation, has Avian
21 allowed you to personal property or property of
22 others that's at the house?

23 A. Very little. In fact, my ---

24 THE COURT: Sir, that's sufficient, in
25 other words. Here, again, in other words, I realize

1 it's very difficult to listen to the question and
2 answer the question. Your attorney will have a right
3 to come back and ask other questions; otherwise,
4 we'll spend all day with an objection and then just
5 having to go -- so answer the - listen and answer
6 only the specific question, but you do not volunteer
7 any information. I know it's difficult.

8 THE WITNESS: I'm trying.

9 Q. (BY MR. HALM) What are some particular
10 incidents where she has denied you access to personal
11 property or property of others?

12 A. Well, my parents have some items at the
13 home and Avian will not let them take them out.
14 There's just many items that I thought -- I didn't
15 know it was going to go on this long and I would like
16 access to some of my things and that's not happening.

17 THE COURT: That's fine. That's fine,
18 sir.

19 Q. (BY MR. HALM) Mr. Biedermann, during the
20 time that the temporary orders have been in place,
21 have you met your financial obligation to pay the two
22 house payments?

23 A. Yes, sir.

24 Q. And how much are those house payments?

25 A. In total, about \$1250.

1 Q. During the time that the temporary orders
2 have been in place, have you provided medical
3 insurance for the children?

4 A. Yes, I have.

5 Q. And what amount is that?

6 A. It's about \$400.

7 Q. And during the time that the temporary
8 orders were in place, have you paid tuition for the
9 three girls attending the Heritage School?

10 A. Yes, I have. That's about \$200 a month.

11 Q. And have you paid the utilities?

12 A. Yes, I have. The utilities average \$150 to
13 \$200 a month.

14 Q. What is your take-home pay from the
15 business that you operate, the Ace - Biedermann Ace
16 Hardware?

17 A. My take-home is about \$1850.

18 Q. Mr. Biedermann, it appears that you're
19 spending a considerable amount of your income on sort
20 of these things. Why haven't you given yourself a
21 raise?

22 A. Well, for the same reason I haven't been
23 able to give myself a raise for all these years. The
24 company just has not made a profit every year for the
25 last 15 years, so it's just the money is not there.

1 Q. Mr. Biedermann, Mr. Nichols alleged that
2 you have gross sales of \$800,000, \$600,000 a year.
3 You're not making a profit on these kinds of sales?

4 A. Yes, that's correct.

5 Q. Why is that?

6 A. This year - this year will be the first
7 year that we're on track to make a profit, mainly
8 because we had a competitor close in town. Before
9 that, it was quite difficult. We made a mistake
10 buying the business in the beginning and we've been
11 trying to get out of the hole ever since, and we
12 tried to sell the business many times, but couldn't.

13 Q. Mr. Biedermann, other than the expenses
14 that you agreed to pay in terms of family support
15 under the temporary orders, are there other expenses
16 that you've incurred?

17 A. Well, tremendous amount of attorney fees,
18 unfortunately, attorney's fees that I'm paying. On
19 my wife's side, she's not paying attorneys' fees, so
20 I'm the one burdened with most of those expenses; and
21 then, of course, having to buy food ---

22 THE COURT: Sir, that's sufficient.

23 Q. (BY MR. HALM) Have you incurred any
24 expenses from Dr. Jack Ferrell, the Court-appointed
25 psychologist?

1 A. Yes, I have. I got a bill for \$2200 and
2 that's not including the children.

3 THE COURT: That's fine. The question
4 was "Have you incurred?"

5 "Yes."

6 That's sufficient, sir. The attorney
7 can ask you in what amount.

8 THE WITNESS: Okay.

9 Q. (BY MR. HALM) And do you expect to pay the
10 attorney fees for Mr. Kurtis Rudkin, the children's
11 attorney ad litem?

12 A. Yes, sir.

13 Q. Now, you're also asking the Court to modify
14 your visitation with your children; is that correct?

15 A. Yes, sir.

16 Q. Why do you feel that the children should
17 spend more time with you?

18 A. They desire it and because their - again,
19 their life-style has change dramatically not being
20 able to, you know -- they -- we had a set schedule
21 when I lived in the home that they'd come to
22 basketball in the morning with me or they'd come to
23 Ace Hardware to work and play. They'd come to the
24 radio show and patch - would be on the radio with
25 me. We'd go to all sorts of different places

1 together, and now that's not happening at all.

2 Q. It's your testimony that the children do
3 not go to the radio show with you?

4 A. Not -- I don't see them on Saturday
5 mornings, no, and that's when the radio show is; and
6 they're not allowed to go, anyway, if they ask.

7 Q. When you went to the basketball games, were
8 there other children present that the other kids
9 played with?

10 A. Yes. The other parents have children that
11 they go to church with and also just see at the
12 basketball court, and it's unusual to go at 5:30 in
13 the morning on Tuesdays and Thursdays and 6:30 on
14 Saturday and I can't - the girls want to go every
15 time.

16 Q. Are you familiar with the term "Uncle Dad"?

17 A. Yes, sir.

18 Q. What is your feeling about being Uncle Dad
19 to your kids?

20 A. Well, it's -- I don't want to be Uncle
21 Dad. I never have been. I've always been a very,
22 very active father with my children, and so I
23 definitely do not want that.

24 Q. What are you asking the Court to grant you
25 in terms of a modification of the visitation?

1 A. Well, I don't -- I would like to have --
2 I'm not sure what the term is, a general visitation
3 that a father would get in the summer, but I'd like a
4 two-week - two two-week periods during the summer to
5 see the children.

6 Q. The term that you were searching for, is
7 that the term that I've referred to as "standard
8 visitation"?

9 A. Yes, sir.

10 Q. And you're asking the Court for your 30-day
11 summer visitation, to break that into two two-week
12 segments?

13 A. Yes, sir.

14 Q. Do you have any specific dates that you
15 would like to see the children?

16 A. Yes.

17 Q. What dates are those, Mr. Biedermann?

18 A. I'd like to have them July - July 13th or
19 13th through the 28th. Actually, the 14th through
20 the 28th, I'm sorry. That's Saturday, Saturday, and
21 then in August I'd like them for the 11th through the
22 26th.

23 Q. As part of the temporary orders, you
24 agreed, did you not, that your wife would have
25 extended vacation period of the children as much as

1 you had one for the Florida trip?

2 A. Yes. In fact, that's why I picked those
3 dates, because the only date we have so -- we've
4 heard, but we haven't got a definite is in between
5 those two two-week periods, so I wanted to make sure
6 she had a chance to take the girls on a vacation.

7 Q. So at this point your wife has not
8 communicated with you about her intent to take an
9 extended vacation?

10 A. That's correct.

11 Q. Mr. Biedermann, you're asking the Court to
12 modify your financial obligations under temporary
13 orders because of a change in circumstance; is that
14 correct?

15 A. Yes, sir.

16 Q. What's the basic change from the time that
17 you entered into the temporary orders until now?

18 A. Well, there's not been a whole lot of
19 change except for the attorney fees have increased
20 tremendously and the time period. I never knew it
21 would go this long. I never knew -- there are so
22 much attorney fees and I agreed to that to -- I
23 agreed for the best ---

24 THE COURT: That's fine, that's fine.

25 THE WITNESS: Well, I have to add one

1 thing. I agreed to pay most of my income for a short
2 period of time, but not for six months.

3 Q. (BY MR. HALM) What would you ask the Court
4 to do in terms of reduction of your financial
5 obligations?

6 A. Well, if I'm going to have the children for
7 a month period, I'll need to buy groceries and food
8 for them. I'm just asking for \$300 reduction from
9 anywhere from what I pay out per month.

10 Q. Under the temporary orders, do you remember
11 a soliloquy by Mr. John Nichols about the importance
12 of establishing communication between you and Avian
13 and appointing a safe harbor person that either one
14 of the attorneys could call for trial that would
15 facilitate communication between you and Avian?

16 A. Yes, sir.

17 Q. And has that person been appointed at this
18 time?

19 A. No, it has not.

20 Q. Is it your desire that the Court encourage
21 the attorneys to work towards that end?

22 A. Yes, sir.

23 Q. Is there anything further you'd like to
24 share with the Court, Mr. Biedermann?

25 A. Lots, but I really can't. I just want to

1 see my children more and my children want to see me
2 more, and since there has not been cooperation with
3 allowing me to see the children even for an hour here
4 or an hour there during the week, then,
5 unfortunately, we need to come to court to get to see
6 them, and I just - I really would like my time to see
7 my children -- not more, but just an equitable time.

8 Q. Would you tell the Court how you think that
9 your personal values differ from those of your wife?

10 A. Well, I began saying a little bit earlier
11 that our values are not that different, but our
12 life-style is quite a bit different in that ---

13 MS. BERGMAN: Objection, Your Honor,
14 he's speculating as to what her values are.

15 THE COURT: All right. You have your
16 objection. You may proceed.

17 Q. (BY MR. HALM) Mr. Biedermann, in terms of
18 actions speaking louder than words, what behaviors do
19 you exhibit around your children that you would like
20 for them to emulate from you as compared to behaviors
21 your wife has exhibited that you would like the
22 children not to emulate?

23 A. Well, I'd prefer not to make a negative on
24 Avian. I just know that a positive attitude is the
25 most important thing with the children and also

1 having a positive atmosphere around them, not only
2 with me, but with my family, and giving the children
3 a lot of confidence in being able to do many things
4 and make decisions on their own.

5 Q. Would you like for the children to be able
6 to come to work with you?

7 A. Yes, sir.

8 Q. And what do you expect them to gain by
9 coming and seeing you working?

10 A. Well, they gain lots. One of my daughters
11 already mixes paint and she's only nine years old;
12 but they come in and they just - they see customers,
13 they do little jobs. They don't do very much work.
14 They end up playing a lot, but they also get to be
15 around a lot of people, and it's just a very good -
16 it's just a good thing for them to be able to learn a
17 good work ethic.

18 MR. HALM: Thank you, Mr. Biedermann.
19 I have no further questions of this witness, Your
20 Honor.

21 CROSS-EXAMINATION

22 BY MS. BERGMAN:

23 Q. Mr. Biedermann, you recall and you just
24 testified that a mediation was held in February of
25 this year?

1 A. Yes.

2 Q. And because of that, you knew that there
3 was an end to what you suggested for visitation; is
4 that right?

5 A. I hoped and I thought there was, because we
6 set dates.

7 Q. Okay. Because you hoped and you thought
8 that there would be an end in May or in March, you
9 agreed and signed that mediation agreement; is that
10 correct?

11 A. Yes, ma'am.

12 Q. Did anyone tell you or promise you that
13 this trial would be within a certain period of time?

14 A. I can get into further mediation, never
15 thought would get to trial ---

16 MR. BERGMAN: Objection, Your Honor,
17 not responsive.

18 THE WITNESS: Well, I'm telling you
19 exactly what ---

20 THE COURT: Just a minute. She's made
21 an objection and I have to rule. Your objection is
22 good, so if you'd rephrase or re-ask your question.

23 Q. (BY MS. BERGMAN) Did anyone promise you or
24 tell you specifically that the trial of this case
25 would be a certain - within a certain period of time?

1 A. We had a date, that's all I knew.

2 Q. "Yes" or "no," Mr. Biedermann?

3 A. I didn't hear a promise. We just had a
4 date. I thought that was the date.

5 Q. Did anyone explain to you that there could
6 be no promises as to whether the case would settle or
7 whether we would go to trial on the case?

8 A. We had a mediation set, so I was hoping
9 that would happen before we went to trial; but, no,
10 no one ---

11 Q. Did anybody? Thank you.

12 THE COURT: Sir.

13 Q. (BY MS. BERGMAN) Mr. Biedermann, we asked
14 for a continuance of this case. Would you agree with
15 me that when other parties say that they're going to
16 intervene in a case and they go to a lawyer to
17 discuss intervention, that perhaps more time is
18 needed for more discovery when there's going ---

19 A. I don't know what you're talking ---

20 Q. --- when there's going to be new lawyers
21 and new parties in the case?

22 MR. HALM: Objection, Your Honor.
23 Mr. Biedermann has no knowledge about whether or
24 not. That requires an opinion.

25 MS. BERGMAN: I'll rephrase the

1 question, Your Honor.

2 THE COURT: I'll allow.

3 Q. (BY MS. BERGMAN) Are you aware that your
4 parents had told your attorney that they were going
5 to intervene in this lawsuit? Did you know that
6 they -- do you know that?

7 A. They were asking about it. They didn't say
8 they would.

9 Q. Are you aware that your attorney told
10 Mr. Nichols and myself that the Biedermanns were
11 going to intervene?

12 MR. HALM: Objection, Your Honor.

13 Mr. Biedermann could not possibly be aware of ---

14 THE COURT: Well, we will let her ask
15 the question.

16 Q. (BY MS. BERGMAN) Are you aware, if you
17 are, that your parents, Mr. and Mrs. Biedermann, told
18 your attorney that they were going to intervene in
19 this lawsuit?

20 MR. HALM: Objection, Your Honor.

21 Q. (BY MS. BERGMAN) Were you aware of that?

22 A. No, I was under the ---

23 THE COURT: She asked if he was
24 aware. The Court will permit the question.

25 THE WITNESS: Yes, I was completely

1 aware with the fact ---

2 Q. (BY MS. BERGMAN) Thank you.

3 A. --- with the fact that we would not
4 have ---

5 THE COURT: Sir, you have answered the
6 question and I have told you repeatedly, sir, that
7 you are not to volunteer information. I realize it's
8 difficult, but, sir, when you volunteer information,
9 you make it dangerous from your attorney's
10 standpoint, therefore, from your standpoint. So it's
11 a rule of law and I'm compelled to enforce the rules
12 here, not that I -- frankly, I get lots of
13 information by people volunteering information, but
14 the rule is and she's invoked the rule of
15 question-and-answer.

16 Restrict yourself to a "yes" or "no"
17 answer, if you can, and if you can't answer "yes" or
18 "no," just answer the specific question. Do not
19 volunteer information. That applies to every witness
20 that testifies here today, so let's proceed.

21 Q. (BY BERGMAN) Mr. Biedermann, at that
22 time -- did you have a chance to look at some of the
23 requests for discovery that we propounded upon you?

24 A. Yes.

25 Q. And were you aware that at that time in the

1 lawsuit, the time that we asked for a continuance,
2 that we had not received all of the discovery?

3 A. No.

4 Q. Nor had we taken any depositions at that
5 time? You were aware of that; correct?

6 THE COURT: Kind of a duplicitous
7 question. If you would rephrase.

8 MS. BERGMAN: I'll move on.

9 Q. (BY MS. BERGMAN) Mr. Biedermann, you have
10 moved this Court for more visitation for this
11 summer. Have you asked for the children every
12 weekend in your pleading?

13 A. Yes, I have.

14 Q. And during the week, as well? During the
15 week, have you asked for visitation?

16 A. From who? What are you talking about?

17 Q. In your Motion ---

18 A. In my motion?

19 Q. --- to Modify Temporary Orders, did you ask
20 for visitation during the week?

21 A. I asked for every weekend, or the general
22 things that. . .

23 Q. Isn't it true that you asked for Tuesday
24 evenings from 6:00 to 8:30?

25 A. If I did not get my two weeks twice in a

1 row, my 30 days, then, yes, I want them every weekend
2 and Tuesday.

3 Q. And every Tuesday?

4 A. Yes, ma'am.

5 Q. Have there been any occasions,
6 Mr. Biedermann, when you have asked for additional
7 time of Friday afternoons or Easter weekend for extra
8 visitation than what you suggested and received in
9 the mediation settlement?

10 A. Yes. Like I said earlier, about four
11 times. No. I requested many, only got about four
12 times.

13 Q. You've testified about this Florida trip
14 with your parents?

15 A. Yes.

16 Q. Did Avian -- did Mrs. Biedermann, Avian
17 Biedermann, offer to your parents and to you or just
18 to your parents to let the children go with them for
19 a week?

20 A. Yes, one week only.

21 Q. Did they request that of her or did she
22 just call and volunteer that she would let them take
23 the kids for a week?

24 A. I asked four months earlier. She's known
25 for four months.

1 Q. Did your parents call and request that
2 visitation or did she just take it upon herself to
3 call and offer that to her parents - your parents?

4 A. I don't know. I don't know what Avian
5 said.

6 Q. Do you recall the Rule 11 Agreement for
7 additional temporary orders that we read into the
8 record here in court on May 14th?

9 A. Yes, ma'am.

10 Q. Do you recall agreeing that Dr. Ferrell
11 would see the family, the children and you and
12 Avian ---

13 A. No.

14 Q. --- on that day?

15 A. No. I agreed to look into him and get
16 an -- just all we got was a brochure to call and
17 check him out. We never -- I never thought I agreed
18 that he was the person.

19 Q. So is your testimony that the Rule 11
20 Agreement that was read into the record did not - did
21 not mention Dr. Ferrell being the Court-appointed
22 psychologist in this case, agreed and ordered by the
23 Court? That's your testimony?

24 A. That's -- I didn't know that that's what
25 that meant.

1 Q. Okay. That's fine, thank you.

2 Mr. Biedermann, there was -- do you
3 remember the incident when you called and asked
4 Mrs. Biedermann to - that you wanted to borrow the
5 barbecue pit from the house?

6 A. Yes, ma'am.

7 Q. Do you remember that occasion?

8 A. Yes.

9 Q. Did she give it to you?

10 A. Only because I brought my neighbor with me.

11 Q. So she did give it to you?

12 A. She said no, but then my neighbor was
13 standing there and she couldn't say no because he was
14 there.

15 THE COURT: Sir, the answer is "yes."
16 The rest of your answer is stricken.

17 THE WITNESS: Okay, but she said
18 no ---

19 THE COURT: Sir.

20 THE WITNESS: Oh, I'm sorry, I
21 didn't ---

22 THE COURT: The -- I'm going to take
23 about a two-minute recess. Let's stand in recess.

24 (Court recessed from 10:33 a.m. to
25 10:38 a.m.)

1 THE COURT: Have a seat, sir. Let's
2 proceed, then, counsel. You may proceed, please.

3 MS. BERGMAN: Thank you, Your Honor.

4 Q. (BY MS. BERGMAN) Ready? Mr. Biedermann,
5 in truth and in fact, your wife did let you take this
6 barbecue pit, did she not?

7 A. Yes, ma'am.

8 Q. Did you tell her that you were going to
9 return it?

10 A. I said anytime she wanted it to use it, she
11 could use it.

12 Q. Did you tell her that you were going to
13 return it ---

14 A. No.

15 Q. --- Mr. Biedermann? You never said, "I
16 will bring it back"?

17 A. I told her she could use it anytime she
18 wanted.

19 Q. Did you ever bring it back?

20 A. No.

21 Q. Did you ever intend to bring it back?

22 A. If she needs it, yes.

23 Q. Has she, in fact, asked you for it back?

24 A. No.

25 Q. She's never called you up or told you in

1 front of other people that she would like to have it
2 back?

3 A. Not that I'm aware of.

4 Q. And it's true that you and your father have
5 asked her for a lawn mower that's at your house; is
6 that correct?

7 A. Yes, ma'am.

8 Q. How long has that lawn mower been at your
9 house?

10 A. Two or three years.

11 Q. Two or three years? In your opinion, to
12 maintain the yard, would she need that lawn mower?

13 A. If she was maintaining it, yes.

14 Q. How big is your backyard?

15 A. I never mowed it with that lawn mower.
16 It's too big.

17 Q. How big is your backyard approximately?

18 A. Big.

19 Q. Is it an acre? Half acre?

20 A. No, quarter acre. I don't know.

21 Q. Quarter acre? Have you seen your wife
22 mowing the lawn or maintaining the yard?

23 A. I've never seen her mow a lawn.

24 Q. You agreed to walk through - a video
25 walk-through of the house, did you not, and that was

1 part of our Rule 11 Agreement that we read into the
2 record?

3 A. Yes, ma'am.

4 Q. Did you, in fact, come to the house for
5 that walk-through?

6 A. Yes, ma'am.

7 Q. And you brought a camera, video camera?

8 A. Video camera and a camera.

9 Q. Do you recall that the Rule 11 Agreement
10 said that you had access to the house specifically
11 for a video walk-through of the house?

12 A. I didn't know if it said video
13 walk-through. I just knew I had a walk-through. I
14 could take pictures.

15 Q. Did you - did you, in fact, ever read the
16 Rule 11 Agreement?

17 A. Yes, ma'am.

18 Q. Did the video camera that you brought with
19 you work?

20 A. No, it did not.

21 Q. It did not work?

22 A. Yes, ma'am.

23 Q. Did you know it didn't work when you
24 brought it over for the video walk-through?

25 A. No. It's not my camera. It's the first

1 time I ever saw it.

2 Q. And you were not aware that it didn't work?

3 A. That's correct.

4 Q. You brought someone with you, didn't you?

5 A. Yes, ma'am.

6 Q. Ron Sutton?

7 A. Yes, ma'am.

8 Q. Was he aware that the video camera didn't
9 work?

10 A. No, ma'am.

11 Q. Where did you get the video camera?

12 A. My friend, Terry Burns.

13 Q. It was Terry Burns'? That's one of your
14 best friends; right?

15 A. Yes, ma'am.

16 Q. And he gave you that video camera and
17 didn't tell you it didn't work?

18 A. He didn't know, either. It was
19 last-minute.

20 Q. Did you attempt to use it at the video
21 walk-through?

22 A. Yes, ma'am.

23 Q. Where exactly were you in the house when
24 you attempted to use that camera?

25 A. In the bedroom.

1 Q. Did you mention anything about, "Oh, well,
2 I guess the camera doesn't work, so now I'm going to
3 have to use the other camera in my hand"?

4 A. I believe so.

5 Q. If someone were to testify otherwise, would
6 they be lying, Mr. Biedermann?

7 A. Yes, ma'am.

8 Q. Prior to you leaving the house that day
9 during this video walk-through, did Mrs. Biedermann
10 offer for you to take anything, any of your personal
11 property ---

12 A. Yes, she did.

13 Q. --- with you that day?

14 A. I believe I - I believe -- I don't
15 remember. I think I -- I - I don't remember.

16 Q. You don't remember her offering, "Kyle,
17 would you like anything? Would you like these coats
18 or would you like to take any of your personal
19 property? Would you like to take whatever you see
20 here that you want to take that's your personal
21 things?" You don't remember her offering for you to
22 take stuff?

23 A. She only offered some coats in the closet.
24 I asked for more things, but she wouldn't let me take
25 them.

1 Q. You asked that day if you could have
2 something else and she refused you; is that your
3 testimony?

4 A. No, she gave me -- she said I could take
5 some coats, which I didn't need them in the summer,
6 and there was one item I found out in the garage, my
7 tuner for my guitar, and she said I could take that,
8 but there were lots of other things I would have
9 liked to have taken.

10 Q. Did you ask for those that day?

11 A. I believe I asked for some things, yes.

12 Q. You asked for some things and she denied
13 you; that's your testimony?

14 A. Yes, yes.

15 Q. Have you customarily by direct payment to
16 the bank account paid the house payment of the
17 residence, the marital residence at 110 West
18 Hackberry?

19 A. It's all direct payment.

20 Q. They're all direct payments, so you
21 customarily have made that payment to the bank
22 through the bank on direct payment for that house
23 payment?

24 A. Yes, ma'am.

25 Q. Is that a joint account, Mr. Biedermann?

1 A. Yes, it is.

2 Q. Isn't it true that your parents have bought
3 another house that you plan to move into?

4 A. That's not for sure. They bought a house,
5 but we don't know who is going to live in it or if
6 we're going to sell it.

7 Q. Do you intend to live there?

8 A. That depends on what happens with my
9 house.

10 Q. If your wife is awarded the marital
11 residence, will you move into the house on Schubert
12 Street?

13 A. I may or may not.

14 Q. Have you been maintaining the yard at the
15 Schubert Street address?

16 A. I'm remodeling the house, so I take care of
17 the whole place.

18 Q. You've been taking care of the whole place?

19 A. Yes, ma'am.

20 Q. Do you have a barbecue pit there?

21 A. No.

22 Q. "Yes" or "no"?

23 A. I said no.

24 Q. Okay. Have you customarily paid the
25 utilities for the house that your children live in?

1 A. Yes. By the Court Order, I have to.

2 Q. Did you pay historically? Before the Court
3 ordered you to pay the utilities for your children's
4 home ---

5 A. Yes, ma'am.

6 Q. --- did you pay them?

7 A. Yes, ma'am.

8 Q. You've testified that your take-home pay is
9 around \$1,850 a month; is that correct?

10 A. Yes, ma'am.

11 Q. Do you have any other income other than
12 that?

13 A. Side jobs. I have taken some extra income
14 this year to pay the school tuition, because I didn't
15 have enough money. I don't have enough money to pay
16 it.

17 Q. What -- where did the school tuition come
18 from?

19 A. That's what I said. I got -- I took, you
20 know, extra -- the store paid me extra in salary and
21 so I wrote the check. You know, they gave me \$400
22 and I would write a \$400 check to the school.

23 Q. Okay. The store paid you extra salary?

24 A. Yes.

25 Q. Did you disclose that to Mrs. Biedermann?

1 A. Well, that just happened this year.

2 Q. Did you tell her about it, the extra
3 income?

4 A. I don't know if I have. The communication
5 is very limited.

6 Q. Do you take any other draws out of the
7 hardware store?

8 A. No.

9 Q. Does the hardware store pay you any kind of
10 perks or benefits?

11 A. No, besides gas and my insurance.

12 Q. Insurance?

13 A. Insurance, gasoline.

14 Q. Trips?

15 A. No, only Ace Hardware conventions, only
16 where a business write-off would be and that's it.

17 Q. Food when you're on trips?

18 A. Business expenses on the trip, on a
19 business trip only.

20 Q. What about your automobile maintenance?

21 A. Store pays that.

22 Q. And you're driving an Ace Hardware-owned
23 vehicle?

24 A. Yes, ma'am.

25 Q. Do you, yourself, charge at the Ace

1 Hardware Store?

2 A. No. I have an account that I have to pay.
3 It's called Farm Plan.

4 Q. How much do you owe on that Farm Plan?

5 A. Twelve hundred dollars.

6 Q. When was the last time you paid on it?

7 A. Well, I missed last month's payment. I
8 couldn't pay it. The payment's pretty high. It's a
9 10 percent payment.

10 Q. So you missed last month's payment, but
11 before that, you paid every month?

12 A. Right. I just paid it. I just wrote a
13 \$194 check yesterday.

14 Q. To pay on that account?

15 A. Yes, ma'am.

16 Q. You just paid that yesterday?

17 A. Yes, ma'am.

18 Q. What would happen if you just stopped
19 paying on that for awhile?

20 A. Has nothing to do with Ace Hardware.
21 That's a straight account, Farm Plan. Ace can't
22 forgive it.

23 Q. They can't forgive it? What would happen
24 if you stop paying on it for awhile?

25 A. I get phone calls when I don't make a

1 payment from Farm Plan.

2 Q. Does Ace Hardware have accounts at other
3 places in town where you charge?

4 A. No. Dodds is the only place and my wife is
5 the only one that charges there. Oh, I bought
6 flowers years ago, but not recently.

7 Q. So you can charge to Ace Hardware at other
8 business around town?

9 A. One business, Dodds, that I know of.

10 Q. That's the only place you can charge?

11 A. That's the only one I know of.

12 Q. What about Jet's?

13 A. That's where we get our gas.

14 Q. Right, but you have a charge account there?

15 A. Yes.

16 Q. So at Dodds and at Jet's. Is there any
17 other place?

18 A. I don't know of any other place.

19 Q. Do you have a cell phone?

20 A. No, ma'am.

21 Q. Do you have any bills that you get at home
22 or that you get personally that Ace Hardware pays
23 for?

24 A. No.

25 Q. Do you sometimes trade services?

1 A. Barter?

2 Q. Barter.

3 A. Uh-huh, my labor on some things, yes.

4 Q. Can you explain to the Court what some of
5 those might be?

6 A. I'll go fix somebody's toilet and they give
7 me something in return or they pay me something for
8 me or fix something that I can't do.

9 Q. I mean, specifically, specific things.

10 A. I just gave you some.

11 Q. Just one or two specific incidents. You
12 fixed somebody's toilet and they gave you ---

13 A. They welded something for me, because I
14 don't have a welding machine.

15 Q. Okay. You testified that you haven't -
16 that you haven't given yourself a raise. Would you -
17 would you please clarify that for me and tell me why
18 you haven't given yourself a raise?

19 A. I don't remember testifying I didn't give
20 myself a raise.

21 Q. That you haven't given ---

22 A. I didn't testify that.

23 Q. You haven't given yourself a raise lately?

24 A. I just said I did earlier. I gave myself
25 the money to pay the school, which is a raise. I got

1 a raise last year, also. I never testified that I
2 did not give myself a raise.

3 Q. Okay, so that \$400 a month, that was a
4 raise and you'll get that every month?

5 A. No, I got it twice. That is not a
6 permanent raise. That's just money that goes on my
7 paycheck and that I needed to pay the school, because
8 I was behind two months, three months on the school.

9 Q. Okay. Why haven't you just given yourself
10 a raise? Why would the owner and president of this
11 Ace Hardware Store have a take-home pay of \$1,850?

12 A. Because I have to pay Ace Hardware
13 Corporation and lots of other bills. I can't pay
14 those bills every month, and I don't think it's right
15 to pay me when I can't pay my creditors.

16 Q. Didn't you testify that this was the best
17 year ever and your profits were really higher this
18 year than they had been in the past fifteen years?

19 A. I don't remember saying that. I said that
20 this was the first year we're probably going to show
21 a profit.

22 Q. This is the first year that you will show a
23 profit?

24 A. Yes, ma'am.

25 Q. Wouldn't this be a good year to give

1 yourself a raise, Mr. Biedermann?

2 A. Just because you show a profit doesn't mean
3 the money is there. It's called cash flow, also.

4 Q. Mr. Biedermann, did you testify that - that
5 you thought it would be for a short period of time
6 that you would see your children one night a week,
7 Saturday night overnight a week, and that, you know,
8 if you could see your children more often, it would
9 be okay, but that's not happening at all? Did you
10 just testify to that?

11 A. Did I say those words? I don't think I
12 said those words.

13 THE COURT: Mr. Biedermann, are you
14 just deliberately trying to be belligerent or
15 evasive, or is this just an act? Sir, this Court is
16 trying to help and to aid you, and just try to answer
17 the questions and if you don't recall, say, "I don't
18 recall that."

19 Yes, sir, you have your exception.

20 MR. HALM: Thank you, Your Honor.

21 Q. (BY MS. BERGMAN) Could you explain to the
22 Court what - what you mean by "Uncle Dad"?

23 A. Uncle Dad would be a father that just likes
24 to see his kids on every other weekends or whatever,
25 play with them and then send them back to the mother

1 and let the mother raise the child.

2 Q. That's what Uncle Dad is?

3 A. That's the term that Jody used and that's
4 what he meant.

5 Q. Has anyone suggested that you are Uncle
6 Dad?

7 A. No.

8 Q. Have your children said that?

9 A. Never.

10 Q. Never? You pled and requested this Court
11 to give you visitation every weekend of the summer
12 and on Tuesday evenings from 6:00 to 8:30. Does
13 this -- is this being an Uncle Dad, Mr. Biedermann?

14 A. I am asking for more time with my children.

15 Q. I think you specifically asked for every
16 weekend and Tuesday evenings for two and a half
17 hours. Does that leave the bulk of the
18 responsibility for the weekday chores and
19 visitation - I mean, excuse me - school, homework,
20 swimming lessons, meals, bedtimes, does that leave
21 that up to Mrs. Biedermann?

22 A. I would like to see the children more,
23 Ms. Bergman. If I get every weekend, I'd be very
24 happy.

25 Q. Have you ever heard the term "Disneyland

1 Dad"?

2 A. I don't know.

3 Q. Have you ever -- did you know that
4 Disneyland Dad is sort of the same connotation as
5 Uncle Dad, where dad gets all the fun time and mom
6 gets all the responsibility?

7 A. Is that a question?

8 Q. Yes.

9 A. What was the question? Do I know that? Do
10 I -- I don't know what you're asking me.

11 Q. Did you know that a Disneyland Dad has the
12 same connotation as an Uncle Dad, where the dad gets
13 all the fun with the children?

14 A. No, I didn't know that.

15 Q. You didn't? You've requested -- you've had
16 how much time and your parents have had - what - ten,
17 eleven days of the children this summer, consecutive
18 days?

19 A. Yes, ma'am.

20 Q. And you still would like to have July 14th
21 through the 28th and August 11th through the 26th; is
22 that true?

23 A. Yes, ma'am.

24 Q. When does school start?

25 A. The first week of September.

1 Q. The first week of September? You are --
2 you have to pay per Court Order the expenses,
3 household expenses, the house payment, utilities and
4 so forth. Are you paying any child support?

5 A. I don't know. I don't think -- I mean, I'm
6 paying all that.

7 Q. You're paying that in lieu of paying child
8 support? You have not been ordered to pay any child
9 support since - since you moved out of the residence;
10 is that correct?

11 A. I believe so, yes.

12 Q. Are you aware that Mrs. Biedermann has gone
13 to her family and has gone to her church for grocery
14 money for her family, for her children? Were you
15 aware of that?

16 A. She doesn't tell me.

17 Q. What would you think if she did tell you?
18 What would be your reaction, Mr. Biedermann?

19 A. I would say it's an unfortunate situation
20 of dragging out this divorce.

21 Q. Mr. Biedermann, have you tried to
22 interrogate your children or any one of them?

23 A. No.

24 Q. Have you tried to ask?

25 A. I ask them questions, yes, but not

1 interrogation.

2 Q. Okay. Have you got them on the phone and
3 told them - asked them questions about where they're
4 going, what's Mommy doing, what's going on?

5 A. Sure.

6 Q. Have you told them about court proceedings
7 and who's got the most points in court?

8 A. I don't know what you're talking about.

9 Q. This is "yes" or "no."

10 A. No.

11 Q. If anyone were to testify otherwise, would
12 they be lying, Mr. Biedermann?

13 A. I don't know, Ms. Bergman. I don't know
14 what you mean. I never said anything about points,
15 so. . .

16 Q. Okay, if you have interrogated the
17 children.

18 A. I ask them questions. Of course, I do.

19 Q. Have you interrogated Kyla or asked her to
20 relay messages or call you and inform you of things?

21 A. Yes, ma'am.

22 Q. You have? Have you given her a camera and
23 told her to take pictures of things around the house
24 and report back to you?

25 A. No. She took one picture voluntarily.

1 Q. Did you give her the camera and ask her to
2 take some pictures, Mr. Biedermann?

3 A. It's her camera.

4 Q. Let me remind you you're under oath,
5 Mr. Biedermann.

6 A. It's her camera that she uses,
7 Ms. Bergman ---

8 Q. Right, and has she ---

9 A. --- and she took it, herself.

10 Q. Did you tell her to take pictures?

11 A. She told me about a broken window and she
12 said, "Dad, do you want me to take a picture?", and I
13 said, "Fine."

14 Q. Have you ever written notes and given them
15 to your daughter, Kyla, with questions on those notes
16 saying, "Has Mrs. So-And-So at the church said
17 anything? Have they said anything to Mommy? Has
18 Mommy said anything to them?" Have you ever given
19 her notes ---

20 A. One time.

21 Q. --- to pass on to somebody else?

22 A. One time.

23 Q. Mr. Biedermann, you've requested that the
24 children go to work with you up at Ace Hardware
25 Store?

1 A. Yes, ma'am.

2 Q. Four little girls; right?

3 A. Yes, ma'am.

4 Q. Nine years old, seven, six and barely five;
5 right?

6 A. No, five.

7 Q. When those little girls would be in the
8 store, who would be -- how would you be able to work?
9 Who would be looking after these children?

10 A. Pam, we've done it many, many, many times.
11 All of us do, the employees and myself.

12 Q. The employees and yourself all mind these
13 or tend to these little girls in a hardware store?
14 Do you think there are any dangers to children who
15 are four or five years old in a hardware store?

16 A. No, I do not. I don't usually take all
17 four of them. I usually take one or two at a time,
18 but I have had all four of them many, many times.

19 Q. Mr. Biedermann, do you recall getting a
20 telephone call from your daughter, Kyla, on July 3rd
21 where she was very upset about not being able to go
22 and be on the SPCA float on the - in the parade?

23 A. Yes, ma'am.

24 Q. What did you tell her?

25 A. I told her that I would call and I told her

1 to call me back.

2 Q. You told her that you would fix it, that
3 you would call and you would make sure that she got
4 to be on that float; is that true?

5 A. No, I did not say that. I said I would
6 call and find out.

7 Q. Did you?

8 A. Yes, I did.

9 Q. And who did you call?

10 A. I called Bonnie Smith.

11 Q. Isn't it true, Mr. Biedermann, that you
12 were so rude when you called Bonnie Smith and so
13 obnoxious that she hung up the phone on you?

14 A. No, that's not true.

15 Q. That's not true?

16 A. No, it's not.

17 Q. And if she were to testify otherwise, she
18 would be lying; is that correct?

19 A. That's correct. My mother was there and
20 listening.

21 Q. What did happen with the parade yesterday
22 morning?

23 A. The parade, she rode on the float with the
24 SPCA.

25 Q. Isn't it true her mother -- thinking that

1 you had called and fixed it and had gotten her to be
2 able to go in the parade, her mother took her up
3 there at 8:00 o'clock in the morning and Mrs. Smith
4 said, "Mrs. Biedermann, you know, you had called me
5 earlier and I had told you that there wasn't any room
6 and then Mr. Biedermann" - and she said, "Yes, but
7 Mr. Biedermann called you and fixed it yesterday and
8 made sure that she got permission to ride on the
9 float"? Isn't that how it happened?

10 A. That's not correct.

11 Q. And she said, "He was very rude to me and I
12 hung up on him"?

13 A. That's not correct.

14 Q. Isn't it true, Mr. Biedermann, that you
15 said, "Avian, you go there with Kyla and make sure
16 she gets on the float"; and she did that, didn't she?

17 A. That's not correct.

18 Q. She went down there and she made sure. She
19 talked to these people, told them how much her
20 daughter wanted to be on the float and she got her up
21 on the float?

22 A. That's just not correct.

23 Q. That's not correct?

24 A. No.

25 Q. Okay. After the parade, did you attempt to

1 take the children with you?

2 A. No, it's not correct.

3 Q. Mr. Biedermann ---

4 A. Which parade? There was two parades,
5 Ms. Bergman.

6 Q. Right.

7 A. Which parade are you talking about?

8 Q. The parade where you told Avian you were
9 going to take the children.

10 A. After the first parade I asked Avian
11 between the two parades, "May I have the girls to
12 have breakfast for one hour before the next parade?
13 Can I have one hour with the girls?", and she said
14 no.

15 Q. And she said no?

16 A. Yes.

17 Q. Do you think that she may have already made
18 other plans?

19 A. She did not make other plans.

20 Q. And you know that for sure?

21 A. Yes, ma'am.

22 Q. What did you say to her when she said, "No,
23 I - I have other plans"?

24 A. I said, "Then I'll just take them."

25 Q. Mr. Biedermann ---

1 A. But I did not take them.

2 Q. --- isn't it true that you did say very
3 loudly, "All right, I will just tell the Judge about
4 it tomorrow in court" right in front of the children?

5 A. She didn't say that. She did not say
6 that. She said, "I'll call the cops."

7 Q. No, you did.

8 A. That's all she said, "I'll call the cops."
9 That's what she does.

10 Q. Mr. Biedermann, you don't try to
11 communicate with your wife, do you?

12 A. All the time. I call lots to talk.

13 Q. Let me turn your attention to July 2nd,
14 Monday, when you brought the children back home. Do
15 you recall the conversation when you brought the
16 children back?

17 A. Yes. I called Avian Sunday night and I
18 asked them, "Do I need to bring the girls home at
19 8:00 o'clock in the morning since they do not have
20 school and since they've been tired and, you know,
21 they may want to sleep until 8:00 o'clock? Do I have
22 to wake them up?" I asked her, "Do I have to wake
23 them up to bring them home?"

24 Q. Okay. All right, and what did she say to
25 you on Sunday?

1 A. She never called me back.

2 Q. You left her a message and she didn't call
3 you back?

4 A. So I called again the next morning, same
5 thing. I said, "The girls -- it's 8:00 o'clock. The
6 girls are still asleep. Do you want me to wake them
7 up or can they stay asleep?"

8 Q. What did she say?

9 A. She never called back.

10 Q. When did you bring the girls home?

11 A. So by 9:00 o'clock, the girls had just
12 gotten up and I was about to feed them breakfast and
13 she finally calls back, and I said, "Avian, do you
14 want me to feed them breakfast?" and she said no, and
15 I said, "Okay, I'll bring them home."

16 Q. When did you bring them home?

17 A. Well, as soon as she called, I got them
18 together. By the time I got all their clothes -- I
19 thought that she would allow me to let them - to feed
20 the children, so it was about fifteen minutes later.

21 Q. Okay. What did you say to her when you
22 brought them back?

23 A. To who?

24 Q. To Avian ---

25 A. I don't remember.

1 Q. --- Biedermann?

2 A. I don't remember.

3 Q. You don't recall having an argument with
4 Avian in front of the children at the house when you
5 brought them back?

6 A. I don't remember.

7 Q. Mr. Biedermann, do you recall you telling
8 Avian in front of the children that she was a fucking
9 asshole?

10 MR. HALM: Objection.

11 THE WITNESS: Oh, please, no.

12 THE COURT: No grounds for objection.

13 THE WITNESS: No.

14 Q. (BY MS. BERGMAN) Do you recall that?

15 A. No, that did not happen.

16 Q. If the evidence shows that it did happen?

17 A. In front of the children? It did not
18 happen.

19 Q. In front of the children.

20 A. No way.

21 Q. Your testimony is that you did not do that
22 in front of the children?

23 A. That's correct.

24 Q. You did not call her a foul name in front
25 of your children?

1 A. That's correct.

2 Q. Mr. Biedermann, you've said that you - your
3 plan for your children is for them to emulate your
4 behavior?

5 A. Yes, ma'am.

6 Q. Do you really want your children or think
7 that it is in their best interest to emulate that
8 type of behavior?

9 A. Tremendously, yes.

10 MS. BERGMAN: I have no more
11 questions, Your Honor.

12 THE COURT: Mr. Rudkin, do you have
13 any questions?

14 MR. RUDKIN: Just a few questions,
15 Your Honor.

16 CROSS-EXAMINATION

17 BY MR. RUDKIN:

18 Q. Mr. Biedermann, I believe you testified
19 that this is an unfortunate situation because it's
20 been dragging out so long?

21 A. Yes, sir.

22 Q. And do you believe that this unfortunate
23 situation has taken a toll on your children?

24 A. Yes, sir.

25 Q. Over the last -- how long has this case

1 been filed? Six, seven months, something like that?

2 A. Seven months now.

3 Q. Have you seen the problems with the
4 children intensify, having more difficulty going
5 through the situation as the months progress?

6 A. Well, yes, but the biggest problem is that
7 they're getting involved now, having to go for
8 testing, having to do other things.

9 Q. Well, would you agree with me that it's in
10 these four children's best interest for this case to
11 terminate as soon as possible?

12 A. Yes, sir.

13 Q. And that we need to end this ---

14 A. Yes, sir.

15 Q. --- in August on the scheduled trial date,
16 August 14th, 15th?

17 A. I would like to end it as soon as
18 possible. If we go to trial and we need more time,
19 that might happen, also, but we would like to get
20 it ---

21 Q. You and I talked during the break and you
22 agreed that this has taken a toll on the children and
23 this case needs to end?

24 A. Yes, sir.

25 Q. Are the children currently in school?

1 A. No.

2 Q. Okay. When do they start back to school?
3 September?

4 A. September, yes, unless they go to public
5 school. Then it will be the end of August.

6 Q. But they're not in any type of daytime
7 program right now?

8 A. No, they're not, not that I'm aware of.

9 Q. What are your work hours?

10 A. I work 8:00 to 6:00, Monday through Friday
11 and Saturdays, and I take off Saturdays when I can.
12 I have flexibility when I go in in the morning. Of
13 course, I can leave a little early if I need to, but
14 that's my usual work hours.

15 Q. As far as the hardware store, you're the
16 boss?

17 A. Yes, sir.

18 Q. You can set your schedule, as well, within
19 reason?

20 A. Yes, but we -- yes, but we work a lot of
21 hours, yes.

22 Q. And, currently, you have visitation with
23 the girls from 5:00 on Saturday through Monday
24 morning at 8:00 a.m.?

25 A. Yes, ma'am -- yes, sir.

1 Q. And that's every single week?

2 A. Yes, sir.

3 Q. And that's not every other, like a standard
4 possession order, but it's every single week?

5 A. A standard would be Friday, you know,
6 weekends. I only have that one day.

7 Q. Would your work schedule allow -- as
8 opposed to returning them at 8:00 a.m. on Monday,
9 would it allow you to keep them through, let's say,
10 for example, noon on Monday, take them to lunch and
11 then return them to your wife's home at noon, 1:00
12 o'clock?

13 A. Yes.

14 Q. And as far as like a Tuesday, Wednesday,
15 Thursday, is there any evening that you might be able
16 to leave work by, let's say, 5:00 o'clock?

17 A. Any evening.

18 Q. Any evening that would work, maybe visit
19 with the children, take them to dinner, take them
20 somewhere and have them back by 8:00 o'clock?

21 A. Yes, but I set this schedule to have the
22 two weeks, because my parents are here to help me and
23 so I'm able to have the children for those two
24 two-week periods.

25 Q. But I'm talking about just in a week, an

1 evening during the week. You could pull that off and
2 not disrupt your work schedule?

3 A. Yes, I could.

4 Q. And as far as the children's bedtime,
5 getting ready for bed, this and that, when does that
6 occur?

7 A. During school, it's usually 8:30, about.

8 Q. Summer?

9 A. And now it's slipped quite a bit, but I
10 don't -- again, I don't see children that much. I
11 don't know what they're -- all I know is they're
12 sleeping later than normal and I know they don't go
13 to bed until much later than normal now.

14 Q. But if you were allowed, say, Tuesday,
15 Wednesday or Thursday evening to pick them up at 5:00
16 and have them back to your ex-wife - your wife at
17 8:00 o'clock, would that work out?

18 A. Yes, sir.

19 Q. And this time you're asking for, some
20 additional summer visitation, are you planning on
21 going out of town or are you planning on just having
22 them here with you for a week or two? What's the
23 plan for your summer visit?

24 A. Well, I'd like to -- I mean, there are some
25 small little trips planned. We're not going

1 anyplace, you know, for a long period of time, but
2 I'd like to be able to plan. I mean, I can't even
3 plan right now, because I don't even know when I'm
4 going to be able to have the children.

5 MR. RUDKIN: I have no further
6 questions, Your Honor.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MR. HALM:

10 Q. Mr. Biedermann, on just a couple of points
11 of clarification. If your wife Avian had asked for
12 the barbecue pit, would have you returned it to her?

13 A. Yes, sir.

14 Q. Did she ever ask for you to return it?

15 A. No, she did not. She never uses it.

16 Q. When I notified you that opposing counsel
17 had filed a Motion to Continue the case, did you ask
18 me to oppose that motion?

19 A. Never, no.

20 Q. You didn't ask me to oppose it?

21 A. I didn't ask you to continue the case. Is
22 that what you're asking? I'm not sure what you're
23 asking.

24 Q. I asked if you asked me to oppose their
25 motion.

1 A. To oppose it?

2 Q. Yes.

3 A. I didn't want the case to -- I didn't want
4 it to be continued, so whatever that means.

5 Q. Okay, so you did.

6 There was much ado made about Bonnie
7 Smith and the SPCA float. Tell the Court what
8 actually transpired in terms of your conversations
9 with Ms. Smith.

10 A. Well, basically, Mrs. Smith talked to
11 Avian's sister first, and for some reason there must
12 have been a horrible exchange, because by the time
13 Kyla called me crying and I called Mrs. Smith back,
14 Mrs. Smith's first words out of her mouth were just -
15 just total anger. So I didn't know what was going on
16 and Mrs. Smith is my neighbor. I mean, myself and my
17 parents have known her for ten years. She lives
18 right across the street from us.

19 I just kept asking, "What's wrong,
20 Ms. Smith? I don't understand. Why are you so
21 angry?"

22 Well, apparently, the conversation
23 with Avian's sister was terrible, and so I -- and,
24 you know, Bonnie just didn't want to -- she was just
25 so angry that there was no conversation. I mean,

1 nothing. We didn't get anywhere.

2 So, the parade on Saturday, the next
3 day, was a children's parade at 8:00 o'clock for all
4 children, and whoever walked in the children's parade
5 at 8:00 o'clock is allowed to walk in the parade at
6 10:00 o'clock. So no matter whatever happened with
7 SPCA, my girls were allowed to be in the parade no
8 matter what.

9 So I told Kyla, I says, "Don't worry,
10 Kyla, you're allowed to be in the parade no matter
11 what. Whether it's on the SPCA float or not, you're
12 going to be in the parade," and that's why I wanted
13 to make sure that Avian got the girls there at 8:00
14 o'clock in the morning. Avian was not even going to
15 bring them at 8:00.

16 So I made sure the girls were there at
17 8:00 o'clock in the morning and the girls walked in
18 the children's parade; and then between that parade
19 and the next parade, I asked if I could just have the
20 girls to go get a donut, and, of course, Avian says
21 no, and so, you know, I mean, obviously, I said,
22 "Well, Avian, I don't think that's right and I want
23 to take them, anyway," I mean, just to see if she was
24 really that serious about not even letting me see the
25 kids for an hour; and so, unfortunately, she was

1 serious, so I let her take the kids; and then I told
2 them they had to be back at 9:30 to go in the parade,
3 and so she brought them back at 9:30; and then I made
4 sure all the girls got on their floats and I told
5 Avian for her to take Kyla to SPCA and asked them if
6 she could come on the float. If not, I would have
7 gotten Kyla on a different spot to walk.

8 Well, I got all three girls on a
9 different float to get in the parade, and she was
10 able to get Kyla to go with the SPCA, so everything
11 worked out great.

12 MR. HALM: Thank you, Mr. Biedermann.
13 No further questions.

14 THE COURT: Recross?

15 REXCROSS-EXAMINATION

16 BY MS. BERGMAN:

17 Q. Mr. Biedermann, you want to take two or
18 three more trips this summer with the kids?

19 A. Not that I know of.

20 Q. You want the children for specific times in
21 July and August?

22 A. I was trying to work around Avian's
23 vacation schedule.

24 Q. All right, and did you not just testify
25 that you would like to take some summer trips with

1 these children?

2 A. I didn't testify that, no. I said I have a
3 couple of things I'd like to go with the girls, but
4 not trips that are long. Schlitterbahn, maybe go to
5 my family - my mother's family ranch out in El Paso,
6 a day and back. That's two days, three days, maybe,
7 at the most, but that's about it.

8 Q. Mr. Biedermann, you've already been on a
9 ten- or eleven-day trip. The children were on the
10 trip about fifteen days or more and you were there
11 for ten days or eleven days, were you not?

12 A. Yes, ma'am.

13 Q. Where are you getting the money,
14 Mr. Biedermann?

15 A. My parents paid for the trip.

16 Q. Your parents paid for the trip and paid for
17 you on the trip and paid your salary while you
18 weren't at work?

19 A. I get vacation from work.

20 Q. How much vacation do you get a year?

21 A. Three weeks, four weeks.

22 Q. Whatever you really want?

23 A. I don't usually take it all.

24 Q. Is there a specific amount?

25 A. I think right now based on my time at work,

1 it's about five weeks by now, probably, but I never
2 keep count of it, because I don't really take it.

3 Q. You don't really take it?

4 A. I would like to. I can't afford it.

5 Q. But if you were to take it, your parents
6 would pay for the trip; right?

7 A. No, only if I went to their place where
8 they were staying. I don't ask them for money to go
9 on trips.

10 Q. But they would be paying? They would be
11 paying for the trips for the children this summer?

12 A. No.

13 Q. Then where would you get the money?

14 A. Only if I went - only if I went to their
15 house or with them, they would help. If I go by
16 myself with my children, they don't pay for my trip.
17 That's why I don't go very many places without my
18 parents, because I can't afford it.

19 Q. Mr. Biedermann, on your birthday -- when
20 was your birthday?

21 A. April 30th.

22 Q. April 30th, and on your birthday, you
23 went - you took the children to San Antonio and set
24 them up in a hotel and went to Chucke Cheese or
25 someplace where the children wanted to go to

1 celebrate your birthday; isn't that true?

2 A. Yes, ma'am.

3 Q. How did you pay for that trip?

4 A. I had a little bit of birthday money, but I
5 paid for it on a credit card.

6 Q. You had birthday money? Haven't you
7 testified earlier that you got birthday money from
8 your parents and bought yourself a gift with that and
9 you did not use it on the trip?

10 A. I bought myself a gift, that's correct. I
11 used a credit card for the trip.

12 Q. What credit card did you use?

13 A. One that was in my wallet.

14 Q. Mr. Biedermann, isn't it true that you used
15 a credit card that your wife was the primary holder
16 on and the bill came to her?

17 A. I had no idea that she was primary. I've
18 had that card for five years and it has my name on
19 it.

20 Q. Do you customarily use that credit card?

21 A. No.

22 Q. You took a trip, an Ace Hardware trip, to
23 New Orleans this year, also, did you not?

24 A. Yes, ma'am.

25 Q. Did you charge anything on that particular

1 credit card on that trip?

2 A. Whatever card was in my pocket, which shows
3 I don't charge to the business. I used my own
4 personal on that trip for my own personal items.

5 Q. And you used the credit card that she's the
6 primary on and that she got the bill for for clothes
7 and shoes and other incidentals on the trip to New
8 Orleans?

9 A. That's the same card we had for seven years
10 or five years and my name is on it. I have no idea
11 who the primary name was. It is both of our card.
12 We both paid it many times.

13 Q. Isn't it true, Mr. Biedermann, that you
14 called the credit card company and requested an
15 additional card?

16 A. No, that's not true.

17 Q. That is not true? Have you ever said that
18 you would pay her back for the \$450 that you put on
19 that credit card that she is responsible for paying?

20 A. Yes, ma'am.

21 Q. Has that happened?

22 A. Yes, ma'am.

23 Q. Can you explain to the Court when and how
24 that happened?

25 A. That happened the first available time. On

1 the telephone I transferred it to a different credit
2 card, because I don't have that much money in the
3 bank to pay that much.

4 Q. Mr. Biedermann, are you aware that
5 Mrs. Biedermann called Bonnie Smith, the head of SPCA
6 here, to try to get Kyla on the float because her dog
7 came - her puppy came from the SPCA and she really
8 wanted to be on that float? Are you aware that
9 Mrs. Biedermann called and tried to arrange that for
10 her daughter?

11 A. No. I had already arranged it months ago.

12 Q. And she left her a message the last time
13 she called - are you aware of that - and she called
14 back and talked to her sister, Tera(ph) Stark?

15 A. I just know she talked to Tera. I didn't
16 know.

17 Q. Is Kyla very emotional these days when
18 something happens that's disappointing to her? Have
19 you noticed?

20 A. No, not any different than normal.

21 Q. Not any different than she's always been?

22 A. Yes.

23 Q. Does she get very emotional when something
24 happens that's very disappointing to her?

25 A. Sometimes, yes.

1 Q. Does she have a little childlike fit?

2 A. I don't think it's a problem.

3 Q. That wasn't my question, Mr. Biedermann.

4 A. Does she have a fit? I don't see her that
5 much, Ms. Bergman.

6 Q. Okay. When she called you on the telephone
7 and she was very upset, was she crying?

8 A. Yes, ma'am.

9 Q. Was she very, very upset? What did she say
10 to you?

11 A. She was crying, because she was not going
12 to be allowed to be on the float and her Aunt Tera
13 told her she could not be in the parade and that made
14 her very, very hurt, because she's been telling her
15 friends and family for months that she was going to
16 walk her dog in the parade.

17 Q. Right. Do you think that it was an easy
18 thing or a fun thing for her aunt to do? When she
19 had just spoken to this woman and told her that there
20 wasn't any room for Kyla on the float, do you think
21 it was a fun thing for her aunt to tell her that she
22 wasn't going to be able to be on the float? Do you
23 think she would have liked to have told her something
24 different?

25 A. Yes, I think she could have told her

1 something different.

2 Q. Do you think she should have lied to her or
3 built up her hopes and said, "Kyla, you know, you're
4 going to be able to get on that float, anyway" when
5 she just wasn't ---

6 A. She just wanted to walk in the parade, so
7 Ms. -- I think her aunt could have said, "Okay, Kyla,
8 we'll figure out a way for you to be in the parade,
9 don't worry about it," instead of ruining her hopes
10 right off the bat with no, without anything else to
11 say to her.

12 Q. Mr. Biedermann. . .

13 MS. BERGMAN: . . .I'm going to have
14 to object.

15 MR. HALM: Your Honor, would you
16 entertain objections to relevancy on this line of
17 questioning?

18 THE COURT: This is cross-
19 examination. I feel like let it come in. You have
20 your exception, running exception.

21 MS. BERGMAN: I have just a couple
22 more questions, Your Honor.

23 Q. (BY MS. BERGMAN) You just testified that
24 you made sure that all the children were there at
25 8:00 o'clock in the morning. How did you make sure

1 that they were all there at 8:00 o'clock,
2 Mr. Biedermann?

3 A. I called the house at 7:30 and made sure
4 that they were up and made sure that Avian knew what
5 time to be there.

6 Q. So you called to make sure that your wife
7 was going to make sure that they were there at 8:00
8 o'clock in the morning?

9 A. Because she was not there the night before
10 when I talked to Kyla, and so I wanted to make sure
11 that she knew what time the events were.

12 Q. Okay, Mr. Biedermann. Mr. Biedermann, you
13 testified that you would like to cooperate or
14 communicate with your wife concerning your children?

15 A. Yes, ma'am.

16 Q. Do you recall a conversation that you had
17 about the health of one of your children while you
18 were in Florida with Avian on the telephone?

19 A. Yes.

20 MS. BERGMAN: You recall that? Your
21 Honor, I have -- we have filed just this morning the
22 transcript from the telephonic hearing that we had in
23 the -- excuse me, I'm wrong. We had deposition
24 testimony that I believe Mr. Nichols was going to
25 file with the Court this morning.

1 MR. NICHOLS: I haven't filed it yet.

2 MS. BERGMAN: You haven't filed it?

3 I'll just ask questions about that.

4 THE COURT: I have the copy in the
5 file of the telephonic transcript with the Court
6 about permitting the children to go, with Dr. Ferrell
7 on the telephone.

8 MS. BERGMAN: Okay, all right.

9 Q. (BY MS. BERGMAN) Mr. Biedermann, do you
10 recall the conversation that you had with Avian
11 Biedermann?

12 A. Yes, ma'am.

13 Q. Do you recall Mrs. Biedermann trying to
14 discuss with you Loren's - your daughter Loren's
15 health, that she had an ear infection and her ears
16 hurt? Do you recall her trying to communicate with
17 you about that?

18 A. Yes.

19 Q. Do you recall how you responded?

20 A. Yes. They all had earaches. They were
21 from swimmer's ear.

22 Q. They all had earaches?

23 A. Yes.

24 Q. Do you recall her calling back and saying -
25 trying to tell you about strept throat because she

1 found out her niece had had it, it was very
2 dangerous, and she thought that her children may have
3 been - come in contact with the strept throat?

4 A. Yes.

5 Q. Do you recall that?

6 A. Yes, and I told her none of them had strept
7 throat or any signs of it.

8 Q. Do you recall that she asked if Loren had
9 been given any medicine for her ears? Do you recall
10 that?

11 A. I don't know if she asked Loren or not.

12 Q. Do you recall Loren asking you, "Daddy, how
13 much fever do I have?"

14 A. Yes.

15 Q. Do you recall what you said over the
16 telephone to Loren to repeat to Mrs. Biedermann so
17 that she could hear it?

18 A. Well, after the question - after the
19 question being asked, "Do you have fever?" ten times
20 and I said, "No fever," I finally said, "Just tell
21 her you have 105."

22 Q. So you told - you told your daughter to
23 tell her mother that she had a 105 fever over the
24 telephone?

25 A. After we had told her ten times that none

1 of them had fever.

2 Q. She asked - she asked ten times, "Do the
3 children have any fever?" and you said no?

4 A. Plus other phone messages that were left
5 and we just kept saying no, no, no.

6 Q. You said no to the phone message?

7 A. We got the phone message and we said no to
8 Avian on two previous phone calls, and she kept
9 calling, asking the same questions. I kept saying,
10 "No, no one has fever"; and finally I got fed up and
11 I said, "Just tell her you have 105." I don't even
12 have a thermometer. She even asked them if I had a
13 thermometer. I said, "No, I don't have a
14 thermometer. They have no fever."

15 Q. Mr. Biedermann, in this telephone
16 conversation with - between Loren, her mother and
17 you, is it your testimony that Avian asked any other
18 time or ten times if Loren had a fever? That's your
19 testimony, that she asked?

20 A. Not Loren. Every child she asked more than
21 once, so that's eight right there, plus asking me a
22 number of times, so, yes it was very easily at least
23 ten times.

24 Q. Okay, so your testimony is that, yes,
25 during this telephone conversation ---

1 A. Not that telephone conversation, no. Over
2 the three or four conversations in the first two
3 days, that's all we kept hearing and we kept telling
4 Avian, "Everything is fine. We're caring for the
5 children. There is no fever. The children are
6 fine. They just have swimmer's ear. Please, you are
7 a thousand miles away. We are taking care of the
8 children." That's what we said.

9 Q. Mr. Biedermann, how do you think she felt
10 when she was told that her child had 105 degrees of
11 temperature?

12 A. Oh, my goodness.

13 MR. HALM: Your Honor, he cannot
14 speculate as to how it felt.

15 THE COURT: Sustained.

16 THE WITNESS: Golly.

17 Q. (BY MS. BERGMAN) Do you think she believed
18 you?

19 A. They didn't have fever?

20 Q. Do you think that Mrs. Biedermann believed
21 you when you told her that Loren had 105 degrees of
22 temperature?

23 A. I got on the phone right after that and
24 just - and told her, "Only kidding." She asked, "Do
25 you have a thermometer?" I said, "No, we don't."

1 Q. In the same telephone conversation ---

2 A. Yes.

3 Q. --- you got back on the phone and said,
4 "I'm just kidding"?

5 A. Later on, when she was talking to one of
6 the next ones, yes.

7 Q. Did you want to talk to Mrs. Biedermann
8 when she called about the children, about how are the
9 children?

10 A. Did I want to talk to her?

11 Q. Yes. Did you want to talk to her about
12 Loren's earache and her pain?

13 A. I didn't want to talk to her about the
14 earache, no, because my parents and I were there and
15 we were - we - we were there and we certainly wanted
16 to take care of my daughter.

17 Q. Had you given her any medicine?

18 A. Yes. We had swimmer's ear stuff for their
19 ears.

20 Q. What is swimmer's ear stuff?

21 A. It's the stuff you put in their ears when
22 they get water in their ears and it helps relieve the
23 pain.

24 Q. It gets the water out of their ears?

25 A. Right, and they also had Children's

1 Tylenol.

2 Q. And you gave them Children's Tylenol?

3 A. Yes.

4 Q. Did you tell Mrs. Biedermann otherwise?

5 A. I told her we were taking care of the
6 children, not to worry. I mean, we were getting
7 burdened by phone calls.

8 Q. Mr. Biedermann, are you aware that when the
9 children came home, they did have fever, all four of
10 them, and that Mrs. Biedermann took them to the
11 doctor here and they had serious infections in both
12 ears, every one of the children?

13 A. They were - had swimmer's ear and I didn't
14 know of any fever. They had no fever and the girls
15 will tell you they had no fever the whole trip. If
16 they had it when they got back, it was maybe from the
17 drive home, from being in hotels, but they had no
18 fever the whole trip.

19 Q. Mr. Biedermann, please answer my question.
20 Are you aware that ---

21 A. No, I'm not.

22 Q. You're not aware that she took them to the
23 doctor?

24 A. I'm not - I'm not -- your question before
25 was did I or was I aware that they had fever and I

1 said no, I was not aware.

2 Q. Were you aware that she took them to the
3 doctor ---

4 A. Yes.

5 Q. --- and they had infection in both ears?

6 A. Yes.

7 Q. Did she report that to you?

8 A. Yes.

9 MS. BERGMAN: I have no more
10 questions.

11 THE COURT: Mr. Rudkin?

12 MR. RUDKIN: No questions.

13 THE COURT: Redirect?

14 MR. HALM: No, Your Honor.

15 THE COURT: You may step down. Thank
16 you, sir.

17 THE WITNESS: Your Honor, I'm sorry.

18 THE COURT: No problem. It's hard to
19 testify.

20 THE WITNESS: Boy.

21 THE COURT: If you need some water,
22 help yourself here.

23 (Witness excused.)

24 MR. HALM: Your Honor, I'd like to
25 call Avian Biedermann at this time, please.

1 THE COURT: Fine, yes. Just have a
2 seat there, please, ma'am; and, let's see, here's the
3 mike. Excuse me, I'm making lots of noise. Just
4 kind of clip the microphone on, please.

5 Then if you'd raise your right hand.

6 (Witness sworn.)

7 THE WITNESS: Yes, I do.

8 THE COURT: And as a practical matter,
9 ma'am, you understand that we're going by question-
10 and-answer here, so answer the specific questions.
11 Do not volunteer information.

12 THE WITNESS: Yes, sir.

13 THE COURT: All right. Can you hear
14 all right?

15 AVIAN A. BIEDERMANN,

16 having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HALM:

19 Q. Mrs. Biedermann, a couple of questions
20 regarding life with Kyle before your marriage broke
21 down. Before Kyle moved out of the house, did Kyle
22 typically fix breakfast for the girls before they
23 went to school?

24 A. Yes.

25 Q. Did Kyle and the girls go on Tuesday

1 mornings to play basketball at the high school gym?

2 A. Yes.

3 Q. Was this a weekly occurrence?

4 A. Sometimes. It was on and off.

5 THE COURT: Can you hear all right?

6 MR. NICHOLS: I can't hear her and I'm
7 sitting right here. May not have that on.

8 THE WITNESS: It says "On."

9 (Brief delay.)

10 THE COURT: Thank you. You may
11 proceed, please.

12 Q. (BY MR. HALM) Ms. Biedermann, did the
13 children ever go down to Ace Hardware and, quote, "Go
14 to work with Dad" on occasion?

15 A. Yes.

16 Q. Of these three activities, did the children
17 ever describe to you any of them as being things they
18 did not want to do?

19 A. On occasion.

20 Q. On occasion? What types of these
21 activities that they participated with their dad did
22 they not want to do?

23 A. Well, all of them on occasion. Sometimes
24 they didn't want to go, but most of the time they
25 did.

1 MS. BERGMAN: We can't hear her.

2 (Brief delay.)

3 THE COURT: Very good, thank you. You
4 want to wait for Mr. Nichols? You may proceed.

5 Q. (BY MR. HALM) Ms. Biedermann, you
6 mentioned that sometimes the children didn't
7 particularly like to be involved in these
8 activities. Can you be more specific?

9 A. I didn't say they didn't want to be
10 involved. It's just that sometimes they didn't want
11 to go that day. They already had something else they
12 wanted to do.

13 Q. But, in general, would you say the children
14 enjoyed spending time with their father?

15 A. Yes.

16 Q. Under the present circumstances, do the
17 children ever ask to see their father more?

18 A. Yes.

19 Q. Do you let them?

20 A. On occasion.

21 Q. What occasions have those been?

22 A. Early on Fridays. They've gone to a church
23 dinner and we let them go ahead and spend the night.

24 Q. And ---

25 A. On occasion they've gone early with their

1 grandparents and early on Saturdays instead of
2 waiting until 5:00 o'clock.

3 Q. And how many times has this occurred since
4 the temporary orders have been in place and your
5 husband moved out of the house?

6 A. If I had to speculate, I would speculate
7 maybe a dozen.

8 Q. So you'd disagree with your husband's
9 previous testimony that it's occurred on four
10 occasions?

11 A. Yes.

12 Q. Do you allow the children to see their
13 father during the middle of the week, some time other
14 than the weekend?

15 A. Yes.

16 Q. And when is this?

17 A. When he drives by the house and stops, they
18 all run out and jump in the truck and they sit out
19 there and talk with him.

20 Q. Ms. Biedermann, when y'all were married and
21 y'all went to restaurants, did you ever notice the
22 children fighting to see who would maybe sit next to
23 daddy?

24 A. Yes.

25 Q. Do you think that same behavior occurs now?

1 A. Probably.

2 Q. Ms. Biedermann, one of the things that
3 Mr. Biedermann was asking this Court to do was to
4 reduce the amount of financial support that he's
5 paying to you and the family. Do you have a business
6 now?

7 A. Yes.

8 Q. What is the nature of your business?

9 A. Hair salon.

10 Q. What are your hours of operation?

11 A. One to 5:00 or 6:00 on Tuesday, Wednesday,
12 and Friday.

13 Q. What is your approximate monthly income?

14 A. Anywhere from 1600 to 1900, I believe.

15 Q. Is your salary fairly close to what your
16 husband's salary was during the time of y'all's
17 marriage?

18 A. One year it was, yes.

19 Q. Have you recently sought loans from family
20 members and members of the church to buy groceries
21 for your family?

22 A. Yes.

23 Q. Would you describe to the Court the amounts
24 and nature of these loans?

25 A. Well, on one occasion my mother and her

1 husband offered to take the girls on a grocery
2 shopping, so we went and I had approximately \$120 to
3 \$140; and they went to the store, got what I needed,
4 and I gave them that much and they paid for the
5 rest - I don't remember how much the rest of that
6 was - and from the church I have on several occasions
7 asked for money. One time was \$400 and one time I
8 got \$300. Another time it may have been 200, and
9 possibly \$50 one time, I think, something like that.

10 Q. Now, let me see if I understand correctly.
11 You have income between 1600 and 1900 a month?

12 A. Yes.

13 Q. How much do you pay for your house payment?

14 A. Nothing.

15 Q. How much do you pay for your gasoline?

16 A. That just depends. If I go out of town
17 with my sister, I give her gas money; but for my
18 personal car, nothing.

19 Q. How much do you pay for utilities?

20 A. I pay the phone bill, which has been about
21 \$200.

22 Q. Mrs. Biedermann, why is your telephone bill
23 \$200 a month?

24 A. Because my lawyer lives out of town.

25 Q. That explains that.

1 A. And I call her and talk to her.

2 Q. Now, Mrs. Biedermann, what other expenses
3 do you incur each month that would cause you to be
4 out of money and have to ask others for support?

5 A. Well, doctor bills.

6 Q. And how much have you incurred in doctor
7 bills in the past two months?

8 A. Approximately \$700.

9 Q. Mrs. Biedermann, I remember your husband
10 giving testimony that he had a medical insurance plan
11 for the children.

12 A. Yes.

13 Q. And this \$700 that you incurred was in
14 addition to the payment by the insurance company?

15 A. Yes.

16 Q. What was the nature of the children's
17 illnesses?

18 A. The children had ear infections with both
19 ears and with the insurance it was right at \$300 for
20 all four of them to take them to the doctor and get
21 the medicine prescribed to them.

22 Q. What other expenses have you incurred?

23 A. Hmm, I have medications I take, myself. I
24 have been diagnosed with thyroid disease and I've had
25 to go to the doctor for that and get blood tests. I

1 try to get things for the children to do for summer
2 activities. There's a number of things.

3 Q. Did you pay for soccer camp for Kyla this
4 year?

5 A. No, I did not.

6 Q. Who did?

7 A. No one, to my knowledge.

8 Q. Do you remember last time we were in court
9 Mr. Nichols saying that he would pay for that if the
10 air conditioner didn't sell?

11 A. That was not soccer camp. That was day
12 camp.

13 Q. Who paid for day camp?

14 A. That was tennis and swimming.

15 Q. Who paid for day camp?

16 A. Mr. Nichols.

17 THE COURT: Counsel, it's a quarter to
18 12:00. I anticipate that the Court - that we will be
19 working, in other words, cannot finish, say, by 1:00
20 o'clock, so the Court's going to go ahead and take a
21 noon recess until approximately 1:00 o'clock; and
22 we'll say you don't have to be here exactly at 1:00,
23 of course, the restaurants and so forth, but we'll
24 try to get started, say, by 1:15 or as soon as we can
25 after 1:00 o'clock.

1 So let's stand in recess. Thank you
2 very, very much.

3 (Court recessed from 11:48 a.m. to
4 3:17 p.m.)

5 THE COURT: By the way, with all
6 counsel hearing, the Court was just reviewing many of
7 the comments, the grandparents being able to see the
8 children. This Court is affirming grandparent
9 visitation with the children, so, no problem.

10 MR. NICHOLS: Your Honor, I believe we
11 have an agreement pursuant to the Rule 11, Texas
12 Rules of Civil Procedure. We'd like to dictate that
13 agreement into the record.

14 THE COURT: All right, if you would,
15 please.

16 MR. NICHOLS: And since the ad litem
17 has been the principal conveyer of the messages and
18 agreement and so on ---

19 THE COURT: We'll let him dictate.

20 MR. NICHOLS: --- I would like for him
21 to make the first offering, and if you could turn so
22 that the court reporter could hear you.

23 MR. RUDKIN: Your Honor, the parties
24 have agreed that the weekend visitation by
25 Mr. Biedermann will be on the first, third, and fifth

1 weekend of every month starting Friday at 6:00 p.m.,
2 terminating the following Monday at 1:00 p.m. to
3 allow Mr. Biedermann to take the children and take
4 them out for lunch and return them to
5 Mrs. Biedermann, and then every Tuesday evening from
6 4:00 p.m. to 8:00 p.m., and Mr. Biedermann would have
7 an additional period of uninterrupted summer
8 visitation for July 14th through the 20th, and during
9 that period of time the children are enrolled in
10 swimming lessons.

11 MR. BIEDERMANN: I didn't know that.
12 During my week they're involved in swimming lessons?
13 Can that be moved to Avian's week, please?

14 THE COURT: No, sir. No, sir, we have
15 agreed on this and I'm going to stay with it. I
16 thought you'd agreed to ---

17 MR. BIEDERMANN: I didn't know it
18 was ---

19 THE COURT: Sir, I thought you had
20 agreed that you would take it. It was reported to
21 the Court you agreed you would make sure these
22 children got to their swimming lessons.

23 MR. BIEDERMANN: I was not told that,
24 sir. I'm sorry.

25 MR. RUDKIN: That's my understanding,

1 the children were to be taken to swimming lessons
2 during that period of time.

3 THE COURT: Are your parents going to
4 be here or someone's here so they go to the swimming
5 lessons?

6 MR. BIEDERMANN: I'm all for that. I
7 was just never told that, sir.

8 THE COURT: All right, very fine.

9 MR. RUDKIN: And that Mrs. Biedermann
10 would have uninterrupted summer visitation from July
11 21st through August the 4th and that the children
12 will go to choir camp August 5th through the 8th, and
13 I believe that is all the material terms of our
14 possession order.

15 THE COURT: All right, for temporary.

16 MR. NICHOLS: I believe all the
17 pick-ups and drop-offs are at Avian Biedermann's home
18 where the children are living.

19 MR. RUDKIN: That has been the custom
20 before, I believe.

21 THE COURT: All right, all right.

22 MS. BERGMAN: Your Honor, I believe
23 the visitation the first, third, and fifth Fridays
24 begins tomorrow ---

25 THE COURT: All right.

1 MS. BERGMAN: --- on July 6th; is that
2 correct?

3 THE COURT: That's correct.

4 MR. RUDKIN: Yes.

5 MS. BERGMAN: And when will -- after
6 Mr. Biedermann's extended time with the children for
7 that week, on July 20th, when will they be home on
8 that day so that they can prepare for their trip the
9 next day?

10 THE COURT: You plan on taking them on
11 vacation?

12 MRS. BIEDERMANN: On the 21st.

13 THE COURT: Let's make the exchange at
14 4:00 p.m., then.

15 MR. RUDKIN: On which day?

16 THE COURT: Twenty-first, the
17 Saturday.

18 MS. BERGMAN: On the 20th?

19 THE COURT: Twentieth, beg your
20 pardon.

21 MR. HALM: That's a Friday, Your
22 Honor.

23 THE COURT: Yes, sir.

24 MR. BIEDERMANN: That's my week.

25 MR. HALM: So Mr. Biedermann will have

1 no visitation with the children on the third
2 weekend?

3 THE COURT: That is correct.

4 MR. RUDKIN: I believe that's
5 everything as to the temporary possession order.

6 THE COURT: All right.

7 MR. RUDKIN: It's my understanding
8 there's an August 14th and 15th trial date, and it
9 would be my position the parties stipulate to that
10 date and get a commitment from them whether it will
11 be jury or non-jury and stick to that day, if we can.

12 MR. NICHOLS: I think we previously
13 agreed it was going to be a non-jury trial.

14 THE COURT: All right, August 14th and
15 15th, non-jury, starting 9:00 o'clock a.m. on August
16 the 14th. I don't know which judge is assigned to
17 the matter, but, certainly, there will be a judge
18 available, and in the event it's going to take -- any
19 continuance is going to require -- if it's a medical
20 or anything, you better have your doctor's permit and
21 so forth. The Court proposes to proceed to trial,
22 because it's only fair to the children.

23 MR. HALM: Your Honor, since we did
24 not request the first continuance and because of the
25 nature of the property and the questions about that

1 and the fact that I feel like it is outside my area
2 of expertise, we have conferred with Scott Monroe
3 over in Kerrville who has more business litigation
4 experience than I do, and we've talked to him about
5 his availability. He informed us that he is not
6 available on July(sic) 14th and 15th.

7 THE COURT: You've been screaming
8 about wanting to go to trial. This setting was made
9 back on - on April the 14th, 2001. Court stays with
10 the August 14th and 15th. Today is the - the 5th of
11 July, which is some 26 days in July left and 13 days
12 in August, so that should leave 39 days for any
13 lawyer to get ready to try the case. I'm sorry, sir,
14 this matter has been cleared with the trial
15 coordinator and we're going to trial.

16 MR. NICHOLS: Your Honor, I've also
17 indicated to Mr. Halm that I'm available to extending
18 discovery deadlines.

19 THE COURT: Right.

20 MR. NICHOLS: If he wants to bring in
21 Mr. Monroe, I'm more than happy to drive over and
22 meet with him.

23 THE COURT: The Court will be more
24 than happy to meet with him, but we'll do the
25 discovery extension, certainly. I have no objection

1 on that, no problem.

2 MR. NICHOLS: Okay. Thank you,
3 Judge. Thank you for your time today.

4 MS. BERGMAN: Before we -- we have an
5 opposing Motion to Enter this order on our telephonic
6 hearing, Your Honor, and have set that for today,
7 also.

8 THE COURT: That's the one before the
9 Court?

10 MS. BERGMAN: Yes, Your Honor. We had
11 this hearing on May the 31st. On or about, at least,
12 by June 6th, I had this order to Mr. Halm. We
13 ordered the transcript because he did not want to
14 enter the order, so it's been delayed; but I would
15 ask that the Court, at least, scrutinize this order
16 and ---

17 THE COURT: I have read it and it's
18 correct, to the best of my knowledge.

19 MS. BERGMAN: Okay. Well, here it is.

20 THE COURT: I don't -- and I regret,
21 but Dr. Ferrell will be testifying or, at least, have
22 his information to us before then and I felt like
23 that, in effect, somewhat cleared the air; and I
24 would say as a matter of record that the Court would
25 certainly be -- if there's a mother and father

1 together, little girls crawling in your bed -- I
2 reared three girls. I understand the situation both
3 of you are in. I'm concerned about the children.
4 The children are my primary concern and that's one
5 reason I'm sticking with this date of August, because
6 those children need to get squared away before they
7 start to school.

8 I do think we probably need some
9 counseling all the way around, but I don't know.
10 There's going to be financial matters. I dislike
11 being the illegitimate so-and-so here today, but it
12 is part of my duties and responsibilities.

13 I am proud of both of you that mother
14 and father are so interested in the children and I am
15 pleased that the grandparents have shown interest,
16 and I'm a firm believer in grandparent visitation and
17 help and I appreciate y'all being here. I very
18 sincerely do and I think you're going to be a good
19 influence on your granddaughters and that's very
20 important to me, because, you see, I'm a grandfather,
21 too.

22 By the way, I was reared in a hardware
23 store. I always maintain I was reared in the alley,
24 so I have no objections, as long as you feel like
25 there's adequate supervision of the children, to go

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1 to the hardware store. I think it's good to be
2 around the public and learn.

3 I am hard-nosed about the children. I
4 think we need to get their lives settled one way or
5 the other and get them settled before they start
6 school. My big concern is financial, whether they're
7 going to stay in private school or have to go to
8 public school.

9 About the telephone, I will enter it.
10 It's in the - been in the pleading file, public
11 scrutiny for some time now, of course.

12 MS. BERGMAN: The order on it?

13 THE COURT: Not the order, but the
14 transcript.

15 MS. BERGMAN: The transcript, yes.

16 THE COURT: And the CASA report has
17 been on file and for public scrutiny, and, therefore,
18 I will go ahead and let the telephonic transcript
19 come in, because I see no reason now to delay.

20 MR. NICHOLS: Your Honor, we have what
21 we feel is an order that puts into order form that.
22 It is reflective of what the Court ruled on that
23 day. Mr. Halm apparently has some differences.

24 THE COURT: I will take both of these
25 under advisement.

1 MR. NICHOLS: Thank you.

2 MS. BERGMAN: Your Honor, if I may,
3 there's one part of the transcript on the telephonic
4 hearing that there's either a typo or something.
5 Mr. Nichols and I remember clearly that after an
6 admonishment of yours, you said if the Court hears
7 that this does not happen or did not act in a proper
8 manner, and I quote, "That is it."

9 MR. NICHOLS: The Court says, "If the
10 Court hears something like this happens or happens
11 again, or something of that nature, then that's it."

12 THE COURT: Right.

13 MS. BERGMAN: "Then that's it."

14 MR. NICHOLS: "That's it." When it
15 got typed up, it got typed up "that" ---

16 MS. BERGMAN: "That is the" and I just
17 wanted to ---

18 THE COURT: I agree with you. I do
19 have a habit. My mind thinks faster than I can
20 speak, but I do use that term, "that's it."

21 MS. BERGMAN: I just wanted to make
22 that clear on the record.

23 THE COURT: Very fine.

24 THE COURT: All right, then. I
25 appreciate it, counsel.

1 MR. NICHOLS: Thank you, Judge.

2 THE COURT: Yes, sir.

3 MR. RUDKIN: I was going to raise one
4 additional matter. I met with the children and in my
5 perspective, these children are nine down to five
6 years old. They have way too much knowledge ---

7 THE COURT: Of what's going on?

8 MR. RUDKIN: --- the buzz words and
9 consternation and fighting back and forth with mom
10 and dad, lawyers and this and that. I would request
11 that there be an admonition that neither party
12 discuss in any fashion, shape, or form the litigation
13 process, court proceedings, anything to do with this
14 matter.

15 THE COURT: That's an Order of the
16 Court, should not be discussed or even mentioned
17 other than the fact that if you have to, that we will
18 be deciding it before school time, but it's very
19 important; and financial conditions and so forth, I
20 think the children should not be involved in this
21 process.

22 If either parent - I find out either
23 parent is making comments, derogatory comments or
24 such about the other parent, this Court will
25 certainly take sanctions against the person making

1 the comments. It's very important, and I think - and
2 I think the grandparents, this would also apply. I
3 think the grandparents can do a lot on both sides, a
4 lot to kind of ease the pressure of the children.

5 Let me say this about children: They
6 learn very fast how to push buttons and they can
7 upset mother or they can upset father or they can
8 upset the grandfather or grandmother or any of the
9 other relatives, so forth, by -- they figure that out
10 pretty fast and they know how to play mother and
11 father against one another, and you have to guard
12 against it. You have to stay united.

13 Now, I really -- this is a marriage
14 that I feel like is probably broken, but I really
15 dislike seeing it go through, because both of you are
16 apparently very caring about your children, both very
17 attractive, both very nice people. In other words, I
18 think this has gotten to the point we're letting our,
19 say, ill feelings interfere with your judgment and
20 thinking on this matter, and I think both parents --
21 and, of course, I've only kind of heard one side
22 here, but I think both parents are nice people. I'm
23 impressed with the grandparents, and this needs to be
24 worked the best it can for the benefit of those
25 children.

1 Now, Mother and Father, you're going
2 to be mother and father for the rest of your lives
3 and those children are going to be your children.
4 There's going to be times when, so forth, but just
5 don't let the other, the ex-spouse - soon ex-spouse
6 push your button and just remember that those kids
7 are going to be pushing your buttons right and left
8 all the time; and it's surprising at what young age
9 they have learned how to do that, so don't get too
10 excited when one child says one thing and just kind
11 of recognize that you have to consider it.

12 Just like in the courtroom, hey, I get
13 after people when they don't answer "yes" or "no" and
14 so forth, but it doesn't - I don't hold that against
15 them, because, hey, I understand how difficult it is;
16 and my concern is the children, and I'll say this, I
17 put that first. But here we have people that you're
18 going to need to learn to communicate and most
19 marriages would work if people would learn to
20 communicate; but I hate to say it, most of us don't
21 learn to communicate and I'm probably a very poor
22 communicator, myself.

23 But what I'm trying to say to you is
24 you two have got to learn to talk to one another
25 without getting your button pushed or not pushing the

1 other person's button, and you're going to find those
2 children are going to play mother and father back and
3 forth against each other. It's going to be an
4 interesting experience, growing up with particularly
5 four girls. Three were a handful, but I can't
6 imagine having four; but I do appreciate the
7 attorneys working today and I appreciate you taking
8 my comments and so forth.

9 Yes, Jody?

10 MR. HALM: Your Honor, we had a motion
11 in regard to the reduction of the financial
12 obligations of Mr. Biedermann. To show that we still
13 have a spirit of cooperation, Mr. Biedermann
14 withdraws that request and will continue under the
15 obligations set by the Court and agreeing to the
16 temporary orders.

17 THE COURT: I'll take that all into
18 consideration during the trial; but let's hold -
19 let's hold to the trial date, because I think it's
20 imperative for the children; and both of you need to
21 get along, get on with your lives instead of -
22 instead of being bound by this and I regret it, and
23 you can tell Mr. Monroe I would love to have him here
24 and see if he can't do something about it.

25 Thank you so much.

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3
4
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6
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MR. NICHOLS: Thank you.

MS. BERGMAN: Thank you for your time.

* * * * *

(Hearing adjourned at 3:34 p.m.)

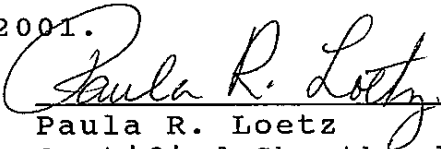
1 STATE OF TEXAS X
 2 COUNTY OF GILLESPIE X

3 I, Paula R. Loetz, Certified Shorthand Reporter,
 4 acting Deputy Official Court Reporter in and for the
 5 216th Judicial District Court of Gillespie County,
 6 State of Texas, do hereby certify that the above and
 7 foregoing contains a true and correct transcription
 8 of all portions of evidence and other proceedings
 9 requested by counsel for the parties to be included
 10 in this volume of the Reporter's Record, in the
 11 above-styled and -numbered cause, all of which
 12 occurred in open court or in chambers and were
 13 reported by me.

14 I further certify that this Reporter's Record of
 15 the proceedings truly and correctly reflects the
 16 exhibits, if any, offered by the respective parties.

17 I further certify that the total cost for the
 18 preparation of this Reporter's Record is \$ 469⁶⁵
 19 and was paid by Petitioner.

20 Witness my hand and seal on this, the 15th
 21 day of July, 2001.

22 
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REPORTER'S RECORD

TRIAL COURT CAUSE NO. 9284

IN THE MATTER OF	X	IN THE DISTRICT COURT
THE MARRIAGE OF	X	
	X	
AVIAN ANN BIEDERMANN	X	
AND	X	
KENNETH KYLE BIEDERMANN	X	216TH JUDICIAL DISTRICT
	X	
	X	
AND IN THE INTEREST OF	X	
KYLA RAE BIEDERMANN,	X	
EMILY LAINE BIEDERMANN,	X	
LOREN NOEL BIEDERMANN,	X	
AND DANA TRUE BIEDERMANN,	X	
MINOR CHILDREN	X	GILLESPIE COUNTY, TEXAS

* * * * *

KEY WORD INDEX

* * * * *

-\$			45:1 45:9 45:16	28th [3] 30:19 30:20	78006 [1] 2:18
\$ [1] 116:18		101:11	110 [1] 48:17	58:21	78029-0092 [1] 116:24
\$1,000 [1] 6:19			115 [1] 3:13	290092 [1] 116:23	78624 [1] 2:12
\$1,850 [2] 50:9			116 [1] 3:14	2nd [1] 66:13	7:30 [1] 85:3
55:11			117 [1] 3:15	-3-	-8-
\$10,000 [1] 13:16			11:48 [1] 101:3	3.003 [1] 9:24	830 [6] 2:13 2:13
\$100,000 [1] 11:19			11th [2] 30:21 58:21	30 [3] 19:24 19:25	2:19 2:19 116:24
\$120 [1] 98:2			12/31/02 [1] 116:25	40:1	116:24
\$1250 [1] 25:25			12:00 [1] 100:18	30-day [1] 30:10	896-1984 [1] 116:24
\$140 [1] 98:3			13 [4] 4:21 5:18	30th [2] 79:21 79:22	8:00 [19] 23:5 64:3
\$150 [1] 26:12			7:18 106:11	31st [1] 107:11	66:19 66:21 67:5
\$1850 [1] 26:17			1301 [1] 2:5	34 [1] 3:9	71:10 71:24 72:8
\$194 [1] 52:13			13th [2] 30:18 30:19	340 [1] 2:12	72:20 73:17 76:3
\$200 [4] 26:10 26:13			14 [1] 3:5	3636 [1] 2:6	76:5 76:13 76:15
98:21 98:23			1414 [1] 2:17	39 [1] 106:12	76:17 84:25 85:1
\$2200 [1] 28:1			1493 [2] 1:25 116:25	3:00 [1] 1:15	85:7 102:6
\$300 [3] 32:8 98:8			14996000 [1] 2:3	3:17 [1] 101:4	8:30 [3] 39:24 57:12
99:19			14th [12] 20:6 30:19	3:34 [1] 115:4	73:7
\$40,000 [1] 12:7			41:8 58:20 70:16	3B [1] 2:18	8th [1] 103:12
\$400 [5] 26:6 50:21			102:8 105:8 105:14	3rd [1] 62:20	-9-
50:22 55:3 98:7			105:16 106:6 106:9	-4-	9284 [2] 1:2 117:2
\$450 [1] 81:18			106:10	4 [3] 3:3 3:4	93 [1] 3:11
\$50 [1] 98:9			15 [2] 3:6 26:25	5:20	997-6975 [1] 2:13
\$600,000 [1] 27:2			15th [7] 20:6 70:16	40,000 [1] 11:20	997-9485 [1] 2:13
\$700 [2] 99:8 99:13			105:8 105:15 106:6	4:00 [2] 102:6 104:14	9:00 [3] 1:15 67:11
\$784,576 [1] 6:18			106:10 116:20	4th [1] 103:11	105:15
\$800,000 [1] 27:2			1600 [2] 97:14 98:11	-5-	9:29 [1] 18:1
\$866,000 [1] 6:17			19 [1] 3:9	50 [1] 14:22	9:30 [2] 77:2 77:3
			1900 [2] 97:14 98:11	5:00 [7] 20:17 23:4	9:59 [1] 18:2
-1-			1986 [1] 6:6	71:23 72:16 73:15	-A-
'93 [3] 12:12 13:20			1989 [1] 10:9	96:2 97:11	a.m [9] 1:15 18:1
14:21			1993 [6] 6:2 12:10	5:30 [1] 29:12	18:2 23:5 42:24
'94 [3] 5:25 12:12			12:15 12:16 13:1	5th [4] 10:9 12:13	42:25 72:8 101:3
13:20			13:3	103:12 106:10	105:15
---			1994 [9] 10:9 10:19	-6-	a.m. [1] 71:24
-numbered [1] 116:11			12:10 12:13 12:16	6 [1] 3:2	able [20] 6:20 7:22
			13:4 13:6 13:9	60 [1] 20:1	19:19 23:8 26:23
			13:11	64.001 [1] 9:14	28:20 34:3 34:5
			1:00 [6] 72:11 100:19	654-0706 [1] 2:7	34:16 62:8 62:21
			100:21 100:22 100:25	654-0708 [1] 2:7	64:2 72:15 72:23
			102:2	69 [1] 3:9	74:2 74:4 77:10
			1:15 [1] 100:24	6:00 [5] 39:24 57:12	83:22 84:4 101:7
			-2-	71:10 97:11 102:1	above [1] 116:6
			2 [1] 5:20	6:30 [1] 29:13	above-entitled [1] 1:17
			200 [1] 98:8	6th [3] 1:14 104:1	above-styled [1] 116:11
			2000 [2] 5:25 6:18	107:12	access [4] 22:20 25:10
			2001 [4] 1:15 3:2	-7-	25:16 45:10
			106:9 116:21	7.001 [3] 9:5 9:7	account [6] 48:16
			20th [3] 102:8 104:7	9:13	48:25 52:2 52:14
			104:18	713 [2] 2:7 2:7	52:21 53:14
			216th [3] 1:5 116:5	74 [1] 3:10	accounts [1] 53:2
			117:5	77 [1] 3:10	Ace [20] 4:23 6:14
			21st [3] 13:6 103:11	77010 [1] 2:6	10:8 11:2 26:15
			104:12		26:15 28:23 51:15
			249-6315 [1] 2:19		51:22 51:25 52:20
			249-8472 [1] 2:19		52:21 53:2 53:7
			257-1208 [1] 116:24		53:22 55:11 55:12
			26 [1] 106:11		61:24 80:22 94:13
			26th [2] 30:22 58:21		achieve [1] 17:2

acoustics [1] 18:22	ahead [6] 7:16 13:23	appoint [3] 7:17	33:24 40:16 40:16
acquired [3] 10:7	18:14 95:23 100:20	8:6 9:16	41:4 41:12 64:15
10:8 10:10	109:18	appointed [1] 32:17	65:8 65:10 66:17
acre [4] 44:19 44:19	aid [2] 16:25 56:16	appointing [1] 32:13	67:13 67:24 68:4
44:20 44:21	air [2] 100:10 107:23	appreciate [4] 108:17	68:8 74:11 76:13
act [2] 56:15 110:7	alive [1] 10:18	110:25 114:6	76:14 76:20 76:22
acting [1] 116:4	allegation [3] 8:13	approach [1] 4:9	77:5 85:4 85:18
actions [2] 17:12	8:15 9:10	appropriate [2] 7:23	86:10 88:8 88:17
33:18	allegations [1] 8:1	8:22	89:4 92:25 93:15
active [1] 29:22	alleged [1] 27:1	approximate [1] 97:13	103:17 117:4
actively [1] 15:6	Allen [2] 2:10 2:11	April [3] 79:21 79:22	Avian's [4] 75:11 75:23 77:22 102:13
activities [4] 94:16	alley [1] 108:23	106:9	avoid [1] 12:20
94:21 95:8 100:2	allow [8] 5:10 14:17	area [1] 106:1	awarded [1] 49:10
ad [4] 2:21 15:21	37:2 67:19 72:7	argument [2] 5:5	aware [24] 37:3 37:16
28:11 101:16	72:9 96:12 102:3	68:3	37:9 37:13 37:24 38:1
add [1] 31:25	allowed [10] 22:23	Arguments [1] 3:4	37:21 37:24 38:1
addition [1] 99:14	23:3 23:10 24:21	arrange [1] 82:9	38:25 39:5 44:3
additional [8] 11:6	29:6 73:14 76:5	arranged [1] 82:11	46:2 46:8 59:12
11:15 40:6 41:7	76:7 76:10 83:12	asleep [2] 67:6 67:7	49:15 71:8 82:4
73:20 81:15 102:7	allowing [2] 24:18	asset [1] 8:5	82:8 82:13 91:8
111:4	33:3	asshole [1] 68:9	91:20 91:22 91:25
additionally [1] 4:24	almost [1] 22:16	assign [1] 11:25	92:1 92:2
address [1] 49:15	along [8] 5:19 11:8	assigned [1] 105:16	away [3] 10:15 89:7
adequate [1] 108:25	16:5 16:18 16:19	assigns [1] 10:22	108:6
adjourned [2] 3:13	17:8 18:8 114:21	assists [1] 10:13	awhile [2] 52:19 52:24
115:4	alter [2] 7:25 9:9	atmosphere [1] 34:1	
adjusted [1] 20:3	always [4] 16:20	attempt [2] 46:20	-B-
admonishment [1] 110:6	29:21 82:21 108:23	64:25	background [1] 24:7
admonition [1] 111:11	amended [1] 4:22	attempted [1] 46:24	backyard [2] 44:14
ado [1] 75:6	amount [8] 13:18	attending [1] 26:9	44:17
advisement [1] 109:25	18:9 26:5 26:19	attention [1] 66:13	bank [7] 11:5 11:10
affect [1] 17:16	27:17 28:7 78:24	attitude [1] 33:24	11:22 48:16 48:21
affects [1] 16:10	97:4	attorney [16] 2:2 2:10 2:16	48:22 82:3
affirmation [1] 14:18	amounts [1] 97:23	2:4 2:10 2:16	barbecue [4] 42:5
affirming [1] 101:8	and-answer [2] 21:13	2:21 15:21 25:2	43:6 49:20 74:12
afford [2] 79:4 79:18	anger [1] 75:15	27:17 28:6 28:10	barely [1] 62:4
afloat [1] 15:7	angry [2] 75:21 75:25	28:11 31:19 31:22	Barter [2] 54:1 54:2
afternoons [1] 40:7	Ann [3] 1:4 2:9	37:4 37:9 37:18	based [2] 14:5 78:25
again [6] 23:10 24:25	117:4	attorney's [3] 15:10	basic [1] 31:16
28:18 67:4 73:10	annual [1] 12:21	27:18 38:9	basketball [4] 28:22
110:11	answer [15] 21:15	attorneys [6] 5:23	29:7 29:12 94:1
against [7] 4:21	21:20 24:5 25:2	20:4 22:18 32:14	bat [1] 84:10
14:3 111:25 112:11	25:5 25:5 38:17	32:21 114:7	bear [1] 7:10
112:12 113:14 114:3	38:17 38:18 42:15	attorneys' [1] 27:19	bears [1] 1:23
age [1] 113:8	42:16 56:16 91:19	attractive [1] 112:17	became [1] 11:12
ago [2] 53:6 82:11	93:10 113:13	August [14] 30:21	bed [4] 23:23 73:5
agree [3] 36:14 70:9	answered [1] 38:5	58:21 70:15 70:16	73:13 108:1
110:18	answering [1] 15:10	71:5 77:21 103:11	bedroom [1] 46:25
agreed [20] 19:16	anticipate [1] 100:18	103:12 105:8 105:14	bedtime [1] 73:4
19:22 20:2 27:14	Antonio [1] 79:23	105:15 106:10 106:12	bedtimes [1] 57:20
30:24 31:22 31:23	anyplace [1] 74:1	108:5	beg [1] 104:19
32:1 35:9 41:15	anytime [2] 43:10	aunt [4] 83:12 83:18	began [1] 33:10
41:17 41:22 44:24	43:17	83:21 84:7	beginning [1] 27:10
70:22 101:24 102:15	anyway [3] 29:6	automobile [1] 51:20	begins [1] 103:24
102:16 102:20 102:21	76:23 84:4	availability [1] 106:5	behavior [3] 69:4
105:13	APPEARANCES [1] 2:1	available [5] 17:2	69:8 96:25
agreeing [2] 41:10	application [2] 11:17	81:25 105:18 106:6	behaviors [2] 33:18
114:15	13:6	106:17	33:20
agreement [10] 3:12	applies [3] 9:7	average [1] 26:12	behind [1] 55:8
35:9 41:6 41:20	apply [1] 112:2	Avian [36] 1:4	believer [1] 108:16
45:1 45:9 45:16	9:13 38:19	2:9 3:11 24:20	belligerent [1] 56:14
101:11 101:13 101:18		25:13 32:12 32:15	bench [1] 9:23

benefit [1]	112:24	88:15	89:9	89:20	45:7	45:18	45:24	causing [1]	17:1
benefits [1]	51:10	90:7	91:4	91:8	46:4	66:14	66:15	celebrate [1]	80:1
Bergman [53]	2:3	91:10	91:19	92:25	67:22	68:5	77:3	cell [1]	53:19
4:1	18:2	93:15	93:19	94:12	built [1]	84:3		certain [3]	35:13
24:2	33:13	95:5	96:20	97:2	bulk [1]	57:17		35:25	35:25
35:16	35:23	97:3	98:22	99:2	burden [1]		8:2	certainly [7]	13:25
36:25	37:3	99:9	101:25	102:3	burdened [2]		27:20	16:11	90:15
37:21	38:2	102:5	102:6	102:11	91:7			106:25	107:25
39:8	39:9	102:17	102:23	103:6	Burns [1]	46:12		certificate [2]	3:14
43:4	56:21	103:9	104:12	104:24	Burns' [1]		46:13	10:18	
60:13	61:7	104:25	114:12	114:13	business [16]	14:11		Certified [2]	116:3
68:14	69:10	117:4	117:5	117:7	14:12	15:6	16:10	116:23	
83:5	84:13	117:8	117:8	117:9	26:15	27:10	27:12	certify [3]	116:6
84:23	85:20	Biedermann's [8]	4:23		51:16	51:18	51:19	116:17	116:14
86:8	86:9	5:2	6:14	10:8	53:8	53:9	81:3	cetera [1]	13:4
92:9	95:1	10:24	11:2	103:17	97:5	97:8	106:3	chambers [1]	116:12
104:1	104:5	104:6			button [3]	113:6	113:25	chance [2]	31:6
107:4	107:10	Biedermanns [1]	37:10		114:1			38:22	
109:12	109:15	big [5]	44:14	44:16	buttons [2]		112:6	change [5]	20:11
110:13	110:16	44:17	44:18	109:6	113:7			28:19	31:13
115:2		biggest [1]		70:6	buy [3]	27:21	32:7	31:19	31:16
best [7]	31:23	bill [5]	28:1	80:16	97:20			changed [2]	20:20
55:16	69:7	81:6	98:20	98:22	buying [1]		27:10	21:9	
107:18	112:24	bills [6]	6:24	53:21	buzz [1]	111:8		charge [7]	51:25
better [1]	105:20	55:13	55:14	99:5				53:3	53:7
between [11]	9:7	99:7			-C-			53:14	80:25
9:14	16:10	birthday [7]		79:19	calendar [1]	23:7		53:14	80:25
31:4	32:12	79:20	79:22	80:1	calls [4]	52:25	67:13	charges [1]	53:5
65:11	76:18	80:4	80:6	80:7	88:8	91:7		Charles [1]	1:18
98:11		80:4			camera [16]	45:7		check [5]	17:15
Biedermann [157]	1:4	bit [5]	13:18	33:10	45:7	45:8	45:8	50:21	50:22
1:5	1:7	33:12	73:9	80:4	45:18	45:25	46:8	Cheese [1]	79:24
1:8	1:9	BL&H [10]	4:23		46:11	46:16	46:24	child [10]	7:4
2:15	3:9	5:1	5:24	6:2	47:2	47:3	60:22	24:9	57:1
5:23	6:1	6:3	7:25	9:9	47:2	47:3	60:22	59:7	59:8
6:13	7:24	11:6	13:10	14:15	61:1	61:3	61:6	89:10	113:10
10:13	10:19	Blanco [1]	2:17		camp [6]	100:3	100:11	childlike [1]	83:1
11:2	11:4	blood [1]	99:25		100:12	100:13	100:15	children [142]	1:9
11:8	11:17	Boerne [1]	2:18		103:12			2:21	17:6
12:8	12:18	Bonnie [5]	63:10	75:24	cannot [2]		89:13	17:9	18:7
13:5	13:11	63:12	75:6	75:24	100:19			20:13	20:16
13:14	13:15	82:5			car [1]	98:18		21:8	21:9
14:14	15:2	boom [1]	7:3		card [16]	6:24	80:5	22:21	22:23
15:16	18:12	borrow [1]	42:4		80:11	80:12	80:15	23:24	23:25
19:4	19:10	boss [1]	71:16		80:18	80:20	81:1	24:19	26:3
22:13	25:19	bought [5]	49:4	53:5	81:2	81:5	81:9	28:14	28:16
26:18	27:1	80:10			81:11	81:14	81:15	29:8	29:10
30:17	31:11	bound [1]	114:22		81:19	82:2		30:5	30:15
33:17	34:18	Box [1]	116:23		care [5]	49:16	49:18	32:6	33:1
33:17	34:18	Boy [1]	92:20		89:7	90:16	91:5	33:3	33:7
36:2	36:13	break [2]	30:11	70:21	caring [2]	89:4	112:16	33:22	33:25
36:2	36:13	breakfast [6]	20:24		carried [1]		16:5	34:5	39:11
37:13	37:17	21:1	65:12	67:12	carry [1]	16:18		41:11	49:25
39:9	40:6	67:14	93:22		carrying [1]		16:19	56:8	57:8
40:17	42:2	Brief [4]	4:5	18:24	cars [1]	6:23		57:22	58:13
43:4	43:15	94:9	95:2		CASA [1]	109:16		59:14	59:22
47:9	48:25	bring [10]	43:16	43:19	case [17]	8:10	9:12	61:24	62:9
56:1	56:4	43:21	66:18	66:23	17:4	35:24	36:6	65:1	65:9
57:13	57:21	67:10	67:15	67:16	36:7	36:14	36:16	66:14	66:16
59:18	59:21	76:15	106:20		36:21	41:22	69:25	68:4	68:17
61:2	61:5	brochure [1]	41:16		70:10	70:23	74:17	68:19	68:22
62:19	63:11	broke [1]	93:20		74:21	75:3	106:13	69:3	69:6
64:6	64:7	broken [2]	61:11		cases [2]	9:5	9:21	70:4	70:22
65:3	65:25	112:14			cash [1]	56:3		72:19	72:23
68:1	68:7	brought [10]	42:10					74:4	76:4
69:18	74:10							78:1	78:9
77:17	78:8							79:16	79:23
79:19	80:14							84:24	85:14
82:4	82:5								
83:3	84:12								
85:12	85:12								
86:11	86:13								

86:6	87:2	88:3	51:4	conveyer [1]	101:17	28:13	29:12	29:24
89:5	89:5	89:8	communicator [1]	113:22	10:3	30:10	31:11	31:24
90:8	90:9	91:6	community [12]	6:25	20:24	32:3	32:20	32:24
91:9	91:12	94:13	7:7	8:6	9:25	33:5	33:8	33:15
94:16	95:6	95:13	10:1	10:6	10:11	35:20	36:12	37:2
95:17	96:12	96:22	11:13	12:4	16:11	37:14	37:23	37:24
99:11	99:18	100:1	16:15	17:17		38:5	39:6	39:10
101:8	101:9	102:3	company [5]	6:6	22:14	41:8	41:23	42:15
102:9	102:22	103:1	7:12	26:24	81:14	42:19	42:22	42:24
103:11	103:18	104:6	99:14			43:1	50:1	50:2
105:1	105:22	108:3	compared [1]	33:20		54:4	56:13	56:15
108:4	108:6	108:14	compelled [1]	38:11		56:22	57:10	59:2
108:25	109:3	111:4	competitor [1]	27:8		60:6	60:7	66:4
111:5	111:20	112:4	complaint [1]	15:11		68:12	69:12	74:7
112:5	112:16	112:25	completely [1]	37:25		75:7	77:14	81:23
113:3	113:3	113:16	computerized [1]	1:23		84:18	85:25	86:4
114:2	114:20	117:9	concern [5]	17:8		86:5	89:15	92:11
children's [11]	20:20		17:8	108:4	109:6	92:13	92:15	92:18
28:10	50:3	70:10	113:16			92:21	93:1	93:8
73:4	76:3	76:4	concerned [1]	108:3		93:13	94:5	94:10
76:18	90:25	91:2	concerning [1]	85:14		95:3	97:3	97:23
99:16			concludes [1]	14:7		100:8	100:17	100:18
choir [1]	103:12		conditioner [1]	100:10		101:3	101:5	101:6
chores [1]	57:18		conditions [4]	11:1		101:8	101:14	101:19
Chucke [1]		79:24	11:3	13:8	111:19	101:22	102:14	102:19
church [6]		29:11	conference [1]	23:17		102:21	103:3	103:8
59:13	61:16	95:22	conferred [1]	106:2		103:15	103:21	103:25
97:20	98:6		confidence [1]	34:3		104:3	104:10	104:13
circumstance [1]	31:13		confirmed [2]	11:1		104:16	104:19	104:23
circumstances [1]	95:16		11:15			105:3	105:6	105:14
Civil [2]	9:13	101:12	conflicts [1]	17:1		105:21	106:7	106:9
claim [2]	9:1	10:2	connotation [2]	58:4		106:19	106:23	106:23
clarification [1]		74:11	58:12			107:8	107:9	107:15
clarify [1]	54:17		connote [1]	10:23		107:17	107:20	107:24
clear [2]	10:3	110:22	connotes [1]	10:20		109:13	109:16	109:22
cleared [2]		106:14	consecutive [1]	58:17		109:24	110:6	110:9
107:23			consider [1]	113:11		110:10	110:12	110:18
clearly [1]		110:5	considerable [1]	26:19		110:23	110:24	111:2
client [4]	4:7	4:22	consideration [5]	10:21		111:7	111:13	111:15
7:16	14:3		12:3	13:7	17:11	111:16	111:24	114:15
clip [1]	93:4		114:18			114:17	116:4	116:5
close [2]	27:8	97:15	considerations [1]	11:3		116:12	117:2	117:3
closet [1]	47:23		consistently [1]	7:1		Court's [3]		16:8
clothes [2]		67:18	consternation [1]	111:9		16:20	100:20	
81:6			contact [1]	87:3		Court-appointed [2]		
coats [3]	47:17	47:23	contains [1]	116:7		27:24	41:21	
48:5			continuance [6]	9:1		courtroom [3]		14:17
Code [5]	9:5	9:6	20:5	36:14	39:1	18:22	113:12	
9:14	9:24	10:5	105:19	105:24		crawling [1]		108:1
coffee [1]	17:25		continue [3]	74:17		create [1]	13:25	
colleague [1]		17:24	74:21	114:14		credit [15]	6:24	11:9
coming [1]		34:9	continued [1]	75:4		11:12	11:23	12:2
comment [3]		15:22	contrary [1]	16:16		80:5	80:11	80:12
16:7	17:21		convenience [2]	16:8		80:15	80:20	81:1
comments [5]		101:7	16:15			81:5	81:14	81:19
111:23	111:23	112:1	conventions [1]	51:15		82:1		
114:8			conversation [9]	66:15		creditors [2]		9:11
commitment [1]		105:10	75:22	75:25	85:16	55:15		
communicate [6]		66:11	86:10	88:16	88:25	cross [2]	3:8	84:18
85:14	86:16	113:18	89:1	90:1		CROSS-EXAMINATION		
113:20	113:21		conversations [2]	75:8		[2]		34:21
communicated [1]	31:8		89:2			69:16		
communication [4]						crucial [1]		14:9
22:16	32:12	32:15				crying [3]	75:13	83:7
						83:11		
						CSR [2]	1:25	116:25
						custody [1]		17:10
						custom [1]		103:19

customarily [4] 48:15	deposition [5] 10:25	92:3 99:5 99:6	eat [1] 21:1
48:21 49:24 80:20	10:25 14:16 15:18	99:20 99:25	effect [2] 14:16 107:23
customers [1] 34:12	85:23	doctor's [1] 105:20	efficiently [2] 17:18
cutting [1] 17:2	depositions [1] 39:4	Dodds [3] 53:4 53:9	17:20
	Deputy [1] 116:4	53:16	ego [2] 7:25 9:10
-D-	derogatory [1] 111:23	doesn't [5] 7:8	eight [1] 88:21
D [1] 3:1	describe [2] 94:17	47:2 56:2 59:16	either [7] 4:14 17:13
d/b/a [1] 4:23	97:23	113:14	32:13 46:18 110:4
dad [20] 11:4 29:16	designated [1] 6:4	dog [2] 82:6 83:16	111:22 111:22
29:18 29:21 56:22	desire [2] 28:18 32:20	dollars [1] 52:5	El [1] 78:5
56:23 57:2 57:6	determinations [1] 4:13	done [1] 62:10	election [1] 6:6
57:13 58:1 58:4	determinative [1] 15:16	donor [3] 14:19 15:13	element [1] 14:9
58:5 58:5 58:11	determine [2] 6:20	donut [1] 76:20	eleven [2] 58:17 78:11
58:12 58:12 61:12	diagnosed [1] 99:24	Dooley [2] 10:14	eleven-day [1] 78:9
94:14 94:21 111:10	dictate [2] 101:12	11:25	eleventh-hour [1] 8:18
dad's [1] 10:25	101:19	down [7] 24:1 24:9	Emerald [1] 2:12
daddy [2] 87:12 96:23	differ [1] 33:9	64:18 92:15 93:21	EMILY [2] 1:8
DANA [2] 1:9	differences [1] 109:23	94:13 111:5	117:8
117:9	differential [1] 20:14	dozen [1] 96:7	emotional [2] 82:17
dangerous [2] 38:9	28:25 33:11 33:12	Dr [6] 24:13 27:24	82:23
87:2	77:7 77:9 82:1	41:10 41:21 86:6	employees [2] 62:11
dangers [1] 62:14	82:20 82:21 83:24	107:21	62:12
date [11] 8:16 20:5	84:1	dragging [2] 59:20	emulate [4] 33:20
31:3 36:1 36:4	difficult [8] 21:17	dramatically [1] 28:19	33:22 69:3 69:7
36:4 70:15 105:8	21:19 22:8 25:1	draws [1] 51:6	encourage [1] 32:20
105:10 108:5 114:19	25:7 27:9 38:8	drive [2] 91:17 106:21	end [11] 6:10 17:25
dates [4] 30:14 30:17	113:15	drives [1] 96:17	20:2 32:21 34:14
31:3 35:6	difficulty [1] 70:4	drawing [1] 51:22	35:3 35:8 70:13
daughter [7] 61:15	dilemma [1] 8:20	drop-offs [1] 103:17	70:17 70:23 71:5
62:20 64:20 82:10	dinner [2] 72:19 95:23	duly [2] 19:11 93:16	enforce [1] 38:11
86:14 87:22 90:16	Dire [1] 3:8	duplicitous [1] 39:6	enjoyed [1] 95:14
daughters [1] 34:10	direct [7] 3:8 19:12	during [2] 10:7	enrolled [1] 102:9
days [19] 19:24 19:25	48:15 48:19 48:20	10:10 25:19 26:1	enter [5] 16:17 22:3
20:1 20:24 22:24	48:22 93:17	26:7 30:4 33:4	107:5 107:14 109:9
23:14 40:1 58:17	disagree [1] 96:8	39:14 39:14 39:20	entered [3] 3:12
58:18 78:6 78:6	disappointing [2] 82:18	47:9 70:21 73:1	21:25 31:17
78:10 78:11 78:11	82:24	73:7 88:25 96:13	entertain [1] 84:16
82:17 89:3 106:11	disclose [1] 50:25	97:16 102:8 102:12	equitable [1] 33:7
106:11 106:12	discovery [5] 36:18	103:2 114:18	equity [2] 8:9 9:16
daytime [1] 71:6	38:23 39:2 106:18	duties [1] 108:12	escape [1] 12:20
deadlines [1] 106:18	106:25		especially [1] 7:23
debt [1] 11:20	discrepancies [1] 14:20	-E-	establishing [1] 32:12
deciding [1] 111:18	discuss [3] 36:17	E [2] 2:17 3:1	estate [1] 11:11
decisions [1] 34:4	86:14 111:12	ear [7] 86:15 86:21	et [1] 13:4
declaration [2] 9:20	discussed [1] 111:16	89:6 90:18 90:20	ethic [1] 34:17
14:5	Discussion [1] 4:11	91:13 99:18	evasive [1] 56:15
Declaratory [2] 5:1	disease [1] 99:24	earache [2] 90:12	evening [6] 72:15
5:8	dislike [2] 108:10 112:15	90:14	72:17 72:18 73:1
declare [2] 13:23	dismantle [1] 8:4	earaches [2] 86:20	73:15 102:5
17:14	Disneyland [3] 57:25	86:22	evenings [3] 39:24
definite [1] 31:4	58:4 58:11	early [5] 21:1 71:13	57:12 57:16
definitely [2] 17:12	disrupt [2] 22:9	95:22 95:25 96:1	event [1] 105:18
29:23	73:2	ears [9] 86:15 87:9	events [1] 85:11
degrees [2] 89:10	disrupted [2] 22:5	90:19 90:21 90:22	evidence [6] 7:10
89:21	22:11	90:24 91:12 92:5	8:20 8:23 10:4
delay [6] 4:5 16:22	District [5] 1:3	99:19	68:16 116:8
18:24 94:9 95:2	1:5 116:5 117:3	ease [1] 112:4	evidentiary [1] 14:18
109:19	117:5	easily [1] 88:22	ex-spouse [2] 113:5
delayed [1] 107:14	divorce [1] 59:20	Easter [1] 40:7	113:5
deliberately [1] 56:14	doctor [7] 91:11 91:23	easy [1] 83:17	ex-wife [1] 73:16
denied [3] 22:20 25:10			exact [1] 24:16
48:12			
deny [1] 14:2			

exactly [3] 35:19	Farm [4] 52:3 52:4	18:18 19:8 22:12	89:2 91:9 96:9
46:23 100:22	52:21 53:1	23:1 25:17 25:17	99:20 114:5 114:6
examination [4] 19:12	fashion [1] 111:12	28:3 31:24 31:24	frankly [1] 38:12
74:8 84:19 93:17	fast [2] 112:6 112:10	42:1 61:13 89:4	Fredericksburg [2]
example [1] 72:10	faster [1] 110:19	89:6 93:1 103:8	1:19 2:12
except [2] 23:9 31:19	father [17] 12:2	110:23	Friday [6] 40:7
exception [3] 56:19	12:8 12:19 29:22	finish [1] 100:19	71:10 72:5 97:12
84:20 84:20	30:3 44:4 56:23	firm [1] 108:16	102:1 104:21
excess [1] 12:21	95:14 95:17 96:13	first [19] 16:3 19:11	Fridays [2] 95:22
exchange [2] 75:12	107:25 108:14 112:7	27:6 45:25 55:20	103:23
104:13	112:11 113:1 113:2	55:22 58:25 59:1	friend [1] 46:12
excited [1] 113:10	114:2	65:10 75:11 75:14	friends [2] 46:14
exclusion [1] 12:22	Fax [4] 2:7 2:13	81:25 89:2 93:16	83:15
excuse [4] 9:4 57:19	2:19 116:24	101:21 101:25 103:23	frivolous [1] 17:12
85:23 93:3	February [3] 19:16	105:24 113:17	front [8] 44:1 66:4
excused [1] 92:23	20:12 34:24	fit [2] 83:1 83:4	68:4 68:8 68:17
exhibit [1] 33:19	fed [1] 88:10	five [7] 62:4 62:6	68:19 68:22 68:24
exhibited [1] 33:21	feed [3] 67:12 67:14	62:15 79:1 80:18	fucking [1] 68:8
exhibits [1] 116:16	67:19	81:10 111:5	full [2] 9:16 19:17
expect [2] 28:9 34:8	feeling [1] 29:18	fix [4] 54:6 54:8	fun [4] 58:5 58:13
expenses [9] 27:13	feelings [1] 112:19	63:2 93:22	83:18 83:21
27:15 27:20 27:24	fees [7] 15:10 27:17	fixed [3] 54:12 64:1	
51:18 59:2 59:3	27:18 27:19 28:10	64:7	-G-
99:2 99:22	31:19 31:22	flexibility [1] 71:12	gain [2] 34:8 34:10
experience [2] 106:4	felt [4] 13:22 89:9	float [17] 62:22 63:4	games [1] 29:7
114:4	89:14 107:22	63:23 64:9 64:16	garage [1] 48:6
expertise [1] 106:2	Ferrell [6] 24:13	64:20 64:21 75:7	gas [3] 51:11 53:13
Expire [1] 116:25	27:24 41:10 41:21	76:11 77:6 77:9	98:17
explain [4] 36:5	86:6 107:21	82:6 82:8 83:12	gasoline [3] 6:23
54:4 56:21 81:23	fever [17] 87:13 87:19	83:20 83:22 84:4	51:13 98:15
explains [1] 98:25	87:20 87:23 88:1	floats [1] 77:4	general [4] 23:24
extended [4] 23:15	88:3 88:10 88:14	Florida [6] 7:6	30:2 39:21 95:13
30:25 31:9 104:6	88:18 89:5 89:19	23:15 23:21 31:1	gentlemen [2] 4:6
extending [1] 106:17	91:9 91:14 91:14	40:13 85:18	4:19
extension [1] 106:25	91:15 91:18 91:25	flow [1] 56:3	gift [14] 12:9 12:10
extra [7] 23:7 40:7	few [3] 17:23 23:6	flowers [1] 53:6	12:10 12:12 12:12
50:13 50:20 50:20	69:14	follow [1] 5:19	12:20 12:21 12:22
50:23 51:2	Fiesta [1] 7:6	102:2	13:20 13:20 14:15
-F-	fifteen [3] 55:18 67:20	follows [2] 19:11	15:18 80:8 80:10
face [1] 7:5	78:10	93:16	Gillespie [5] 1:9
facetious [2] 7:15	fifth [2] 101:25 103:23	food [3] 27:21 32:7	1:19 116:2 116:5
7:19	fighting [2] 96:22	51:17	117:9
facilitate [1] 32:15	111:9	foregoing [1] 116:7	girls [30] 20:19 26:9
fact [16] 7:22 8:6	figure [2] 84:8 112:9	forgive [2] 52:22	29:14 31:6 62:2
13:11 13:25 15:24	file [5] 8:2 85:25	52:23	62:7 62:13 65:11
22:24 24:23 31:2	86:5 109:10 109:17	form [3] 15:4 109:21	65:13 66:18 67:5
38:1 38:3 43:5	filed [9] 5:3 7:14	111:12	67:6 67:10 67:11
43:23 45:4 45:15	12:15 16:7 70:1	formal [2] 4:25	71:23 76:7 76:13
106:1 111:17	74:17 85:21 86:1	5:7	76:16 76:17 76:20
fair [2] 12:7 105:22	86:2	forth [16] 6:16 8:18	77:4 77:8 78:3
fairly [1] 97:15	filing [1] 7:18	9:2 16:20 16:21	91:14 93:22 93:25
familiar [1] 29:16	final [4] 9:18 16:4	17:10 59:4 100:23	98:1 108:1 108:2
family [19] 6:25	16:22 16:23	105:21 111:9 111:19	114:5
7:4 8:10 9:5	finally [3] 67:13 87:20	112:9 113:4 113:14	given [11] 26:20 54:16
9:6 9:21 9:24	88:10	114:3 114:8	54:18 54:21 54:23
10:5 27:14 34:2	financial [9] 18:9	forward [2] 4:19	55:9 60:22 61:14
41:11 59:13 59:14	25:21 31:12 32:4	5:4	61:18 87:9 90:17
78:5 78:5 83:15	97:4 108:10 109:6	foul [1] 68:24	giving [2] 34:2 99:10
97:5 97:19 97:21	111:19 114:11	found [2] 48:6 87:1	glad [2] 14:18 17:6
far [3] 71:15 72:14	finding [1] 17:21	foundation [1] 8:12	goes [2] 14:23 55:6
73:4	findings [3] 7:24	four [17] 23:8 40:10	Golly [1] 89:16
	24:14 24:16	40:11 40:24 40:25	gone [5] 19:17 59:12
	finds [1] 8:5	62:2 62:15 62:17	59:13 95:22 95:25
	fine [18] 17:16 18:6	62:18 70:10 78:21	good [8] 34:15 34:16

34:17 95:3 goodness [1] granddaughters [1] 108:19 grandfather [2] 112:8 grandmother [1] grandparent [2] 108:16 grandparents [6] 101:7 112:3 grant [1] granted [1] great [3] 77:11 groceries [3] 32:7 grocery [2] 98:1 gross [1] grounds [1] growing [1] guaranty [1] guard [1] guess [1] guitar [1] gym [1]	35:22 108:18 89:12 108:20 112:8 112:8 101:8 96:1 108:15 112:23 29:24 20:8 6:22 6:24 59:13 27:2 68:12 114:4 11:21 112:11 47:2 48:7 94:1	55:25 109:1 89:12 108:20 112:8 112:8 101:8 96:1 112:2 96:1 108:15 112:23 29:24 20:8 16:11 6:24 59:13 27:2 68:12 114:4 11:21 112:11 47:2 48:7 94:1	106:24 harassment [1] harbor [1] hard [1] hard-nosed [1] hardware [25] 4:23 11:2 51:7 52:1 53:7 55:12 62:15 94:13 Hardware-owned [1] 51:22 hate [1] head [1] health [2] hear [9] 36:3 94:5 101:22 heard [4] 57:25 hearing [19] 3:13 19:15 23:13 23:17 89:3 107:11 hears [2] held [2] help [6] 72:22 108:17 helps [1] hereby [2] 116:6 Heritage [1] herself [2] 61:9 hey [2] high [3] 94:1 higher [1] himself [1] historically [1] Hmm [2] hold [4] 114:18 holder [1] hole [2] home [15] 50:4 66:18 67:15 91:9 104:7 homework [1] Honor [45] 4:16 9:22	15:5 32:13 92:18 109:3 4:14 6:14 10:8 28:23 51:15 51:9 53:2 55:11 62:13 80:22 109:1 113:20 82:5 85:17 86:15 19:5 21:14 87:17 93:13 94:6 95:1 1:16 112:21 1:12 5:6 16:4 22:24 23:11 23:16 23:18 85:22 107:6 115:4 110:6 110:10 1:19 34:24 16:25 56:16 79:15 92:22 90:22 10:21 26:9 41:2 113:12 113:15 6:17 52:8 55:17 11:6 50:2 22:6 99:23 18:14 113:14 80:15 6:15 27:11 25:13 28:21 53:21 66:14 67:10 72:11 72:11 103:17 57:19 4:8 5:14 14:17	15:3 15:8 15:20 15:23 18:5 18:11 21:4 24:2 33:13 34:20 35:16 36:22 37:1 37:12 37:20 43:3 56:20 69:11 69:15 74:6 84:15 84:22 85:21 89:13 92:14 92:17 92:24 101:10 101:23 103:22 104:22 105:23 106:16 107:6 107:10 109:20 110:2 114:10 Honorable [1] 1:18 hoped [2] 35:5 35:7 hopes [2] 84:3 84:9 hoping [1] 36:8 horns [1] 8:20 horrible [2] 18:23 75:12 hotel [1] 79:24 hotels [1] 91:17 hour [5] 33:3 33:4 65:12 65:13 76:25 hours [6] 15:12 57:17 71:9 71:14 71:21 97:10 house [32] 20:21 20:22 22:10 24:22 25:22 25:24 42:5 44:5 44:9 44:25 45:4 45:10 45:11 46:23 47:8 48:16 48:22 49:3 49:4 49:9 49:11 49:16 49:25 59:3 60:23 68:4 79:15 85:3 93:21 96:5 96:17 98:13 household [1] 59:3 Houston [1] 2:6 hundred [1] 52:5 hung [2] 63:13 64:12 hurt [2] 83:14 86:16 husband [4] 16:10 96:5 98:1 99:9 husband's [2] 96:8 97:16	6:2 6:3 7:25 9:9 11:6 13:10 incident [2] 42:3 24:15 incidentals [1] 81:7 incidents [2] 25:10 54:11 included [1] 116:9 including [1] 28:2 income [13] 6:25 12:24 16:11 16:15 17:9 17:17 26:19 32:1 50:11 50:13 51:3 97:13 98:11 Incorporated [1] 14:15 increased [2] 18:7 31:19 incur [1] 99:3 incurred [6] 27:23 28:4 99:6 99:13 99:22 Index [2] 3:15 117:12 indicate [4] 6:10 8:21 9:6 12:17 indicated [1] 106:17 individual [1] 6:8 infection [2] 86:15 92:5 infections [2] 91:11 99:18 influence [1] 108:19 inform [1] 60:20 information [12] 11:16 21:18 21:19 24:5 25:7 38:7 38:8 38:13 38:13 93:11 107:22 informed [1] 106:5 inherent [1] 17:14 instead [6] 16:25 23:23 84:9 96:1 114:21 114:22 instructed [1] 15:1 insurance [7] 26:3 51:11 51:12 51:13 99:10 99:14 99:19 intend [2] 43:21 49:7 intensify [1] 70:4 intent [6] 14:13 14:19 15:13 15:15 15:18 31:8 interest [7] 1:7 14:12 17:7 69:7 70:10 108:15 117:7 interested [1] 108:14 interesting [4] 11:14 12:5 12:14 114:4 interestingly [1] 12:25 interfere [1] 112:19 interrogate [1] 59:22 interrogated [2] 60:16 60:19 interrogation [1] 60:1
---	--	---	--	---	---	--

-H-

-I-

Interruption [1] 15:14	13:16 14:13 14:24	21:12 38:11	looking [1] 62:9
intervene [4] 36:16	15:1 15:16 18:20	lawn [6] 44:5 44:8	looks [2] 10:5 23:8
37:5 37:11 37:18	19:3 19:10 117:5	44:12 44:15 44:22	Loop [1] 2:12
intervened [1] 9:12	kept [6] 75:19 88:5	lawsuit [3] 37:5	Loren [10] 1:8
intervention [1] 36:17	88:8 88:9 89:3	37:19 39:1	87:8 87:11 87:12
inventories [1] 11:20	Kerrville [2] 106:3	lawyer [4] 10:12	87:16 88:16 88:18
inventory [1] 11:23	116:24	36:16 98:24 106:13	88:20 89:21 117:8
invited [1] 7:16	Key [2] 3:15 117:12	lawyers [2] 36:20	Loren's [3] 86:14
invoked [2] 21:13	kidding [2] 89:24	111:10	86:14 90:12
38:14	90:4	learn [7] 34:16 109:2	losses [1] 6:8
involved [7] 15:6	kids [9] 7:6 29:8	112:6 113:18 113:19	lots [7] 32:25 34:10
15:11 70:7 95:7	29:19 40:23 56:24	113:21 113:24	38:12 48:8 55:13
95:10 102:12 111:20	76:25 77:1 77:18	learned [1] 113:9	66:12 93:3
issue [2] 13:25 15:24	kind [8] 7:2 19:18	least [4] 88:22 107:11	louder [1] 33:18
issued [2] 6:9 10:19	39:6 51:9 93:4	107:15 107:21	loudly [1] 66:3
item [1] 48:6	112:4 112:21 113:10	leave [6] 23:15 57:17	love [2] 7:17 114:23
items [4] 6:24 25:12	kinds [1] 27:3	57:20 71:13 72:16	lowered [1] 7:5
25:14 81:4	knew [8] 20:1 31:20	106:12	Lumber [1] 6:5
itself [1] 17:1	31:21 35:2 36:1	leaving [1] 47:8	lunch [2] 72:10 102:4
	45:13 85:4 85:11	left [5] 67:2 82:12	lying [3] 47:6 60:12
		88:4 106:11 113:7	63:18
	Knopp [1] 14:24	legal [2] 5:5 9:16	
-J-	knowing [1] 19:24	less [1] 6:18	-M-
J [2] 2:10 2:11	knowledge [4] 36:23	lessons [6] 57:20	ma'am [45] 35:11
Jack [1] 27:24	100:7 107:18 111:6	102:10 102:12 102:22	40:4 41:9 42:6
Jet's [2] 53:12 53:16	known [2] 40:24	103:1 103:5	43:7 44:7 45:3
jobs [2] 34:13 50:13	75:17	letting [2] 76:24 112:18	45:6 45:17 45:22
Jody [4] 2:10 2:11	knows [3] 6:7 8:9	84:2	46:5 46:7 46:10
57:3 114:9	9:23	lieu [1] 59:7	46:15 46:22 47:7
John [3] 2:2 2:5	Kurtis [3] 2:16 2:17	life [2] 21:9 93:20	48:24 49:19 50:5
32:11	28:10	life-style [3] 20:20	50:7 50:10 51:24
joint [1] 48:25	Kyla [19] 1:7 60:19	28:19 33:12	52:15 52:17 53:20
judge [6] 1:18 66:3	61:15 62:20 64:15	liked [2] 48:9 83:23	55:24 58:19 58:23
105:16 105:17 107:3	75:13 76:9 76:10	likes [1] 56:23	60:21 62:1 62:3
111:1	77:5 77:7 77:10	limited [1] 51:5	62:23 65:21 69:5
judgment [5] 5:1	82:6 82:17 83:20	line [1] 84:16	71:25 78:12 80:2
5:1 5:8 5:8	84:3 84:7 85:10	listen [5] 21:20 24:5	80:24 81:20 81:22
112:19	100:3 117:7	24:7 25:1 25:5	83:8 85:15 86:12
Judicial [3] 1:5	Kyle [28] 1:5 2:15	listening [1] 63:20	93:2 93:9
116:5 117:5	3:9 5:2 6:12	litem [4] 2:21 15:21	machine [2] 1:23
July [16] 1:14 3:2	7:24 10:19 10:22	28:11 101:16	54:14
30:18 30:18 58:20	10:24 11:1 11:3	litigation [2] 106:3	maintain [2] 44:12
62:20 66:13 77:21	11:5 11:17 12:1	111:12	108:23
102:8 103:10 104:1	12:18 13:5 13:14	live [3] 49:5 49:7	maintaining [3] 44:22 49:14
104:7 106:6 106:11	13:15 15:19 18:20	49:25	maintenance [1] 51:20
106:11 116:21	19:3 19:10 47:16	lived [2] 20:22 28:21	makes [1] 7:24
jump [1] 96:18	93:20 93:21 93:21	lives [8] 22:4 22:10	manner [2] 16:2
June [1] 107:12	93:25 117:5	22:10 75:17 98:24	110:8
jury [1] 105:11		109:4 113:2 114:21	March [1] 35:8
justified [2] 15:5		living [1] 103:18	marital [2] 48:17
24:17		loan [6] 11:4 11:7	49:10
		11:7 11:17 11:21	market [1] 12:7
-K-	labor [1] 54:3	13:5	marriage [7] 1:3
K [1] 2:3	LAINÉ [2] 1:8	loans [2] 97:19 97:24	10:7 10:10 93:20
K-1 [3] 12:23 13:12	117:8	116:22	97:17 112:13 117:3
14:23	last [10] 22:24 23:11	Loetz [3] 1:24 116:3	marriages [1] 113:19
K-1s [2] 6:9 13:10	26:25 52:6 52:7	longer [1] 10:17	married [2] 10:9
keep [5] 4:3 4:4	52:10 55:1 69:25	look [5] 5:19 11:11	96:20
15:7 72:9 79:2	82:12 100:8	17:9 38:22 41:15	material [1] 103:13
Kenneth [22] 1:5	last-minute [1] 46:19	looked [2] 12:11	matter [16] 1:3
2:15 3:9 6:4	late [2] 8:17 8:25	13:9	5:8 16:3 16:4
10:13 10:22 11:7	lately [2] 16:7 54:23		16:18 76:6 76:8
12:8 12:18 13:1	law [13] 2:2 2:4		76:10 93:8 105:17
13:11 13:13 13:14	2:5 2:10 2:11		
	2:16 2:17 5:9		
	8:10 9:21 16:8		

106:14	107:24	111:4	missing [1]	6:2	59:9	93:21	96:5	31:21	35:14	41:17
111:14	112:20	117:3	mistake [1]	27:9	102:13			41:17	43:15	43:25
matters [5]	9:7		mixes [1]	34:11	moving [1]	19:21		44:15	44:23	55:1
16:24	17:2	17:11	modification [2]	1:12	mow [1]	44:23		57:9	57:10	60:14
108:10			29:25		mowed [1]	44:15		67:1	67:9	74:15
may [26]	4:8	4:19	modify [3]	28:13	mower [4]	44:5		74:19	79:1	103:7
5:12	7:23	10:8	31:12	39:19	44:8	44:12	44:15	new [4]	36:20	36:21
12:13	13:6	19:9	mom [2]	58:5	44:22			80:23	81:7	
20:5	33:16	35:8	Mommy [3]	60:4	mowing [1]	44:22		next [7]	65:12	67:4
41:8	43:2	49:13	61:17	61:18	Mrs [30]	8:7	37:17	76:2	76:19	90:6
49:13	65:11	65:17	Monday [7]	23:5	40:16	42:4	47:9	96:22	104:9	
66:21	87:2	92:15	66:14	71:10	50:25	57:21	59:12	nice [2]	112:17	112:22
94:7	94:10	95:4	72:8	72:10	61:16	64:3	64:4	Nichols [33]		2:2
98:8	107:11	110:2	monetary [1]	16:21	75:10	75:13	75:14	2:5	3:4	4:8
McKinney [1]	2:5		money [2]	6:14	75:16	82:5	82:9	4:20	5:14	5:17
meals [1]	57:20		6:22	7:2	86:13	87:16	89:20	10:17	19:7	27:1
mean [15]	4:14	23:17	26:25	50:15	90:7	91:4	91:10	32:11	37:10	85:24
54:9	56:2	56:22	54:25	55:6	93:19	98:22	99:2	86:1	94:6	95:4
57:19	59:5	60:14	59:14	78:13	99:9	102:5	103:9	100:9	100:16	101:10
73:24	74:2	75:16	79:13	80:4	104:12			101:16	101:20	103:16
75:25	76:21	76:23	80:7	82:2	Ms [58]	2:3	4:1	105:12	106:16	106:20
91:6			98:17	99:4	18:2	21:4	24:2	107:2	109:20	110:1
means [2]	21:14	75:4	monies [1]	7:7	33:13	34:22	35:23	110:5	110:9	110:14
meant [2]	41:25	57:4	Monroe [3]	106:2	36:13	36:25	37:3	111:1	115:1	
mediation [7]	19:18		106:21	114:23	37:16	37:21	38:2	niece [1]	87:1	
19:24	34:24	35:9	month [15]	6:15	39:8	39:9	43:3	night [7]	20:17	20:18
35:14	36:8	40:9	6:19	26:10	43:4	56:21	57:23	56:6	56:7	66:17
medical [3]	26:2		32:7	32:9	60:13	61:7	65:5	85:9	95:23	
99:10	105:19		52:11	55:3	68:14	69:10	75:9	nil [1]	22:17	
medications [1]	99:23		55:14	98:11	75:20	77:16	83:5	nine [3]	34:11	62:4
medicine [3]	87:9		99:3	102:1	84:7	84:13	84:21	111:5		
90:17	99:21		month's [2]	52:7	84:23	85:20	86:2	NOEL [2]	1:8	117:8
meet [2]	106:22	106:24	52:10		86:8	86:9	89:17	noise [1]	93:3	
members [2]	97:20		monthly [1]	97:13	92:9	94:12	95:1	non-jury [3]		105:11
97:20			months [11]	32:2	95:5	96:20	97:2	105:13	105:15	
mention [2]	41:21		40:24	40:25	103:22	104:1	104:5	non-passive [2]	13:15	
47:1			55:8	70:1	104:18	107:4	107:10	13:17		
mentioned [3]	23:13		70:5	82:11	107:19	109:12	109:15	none [2]	87:6	87:25
95:6	111:16		99:7		110:2	110:13	110:16	nonresponsive [1]	21:5	
merely [1]	16:17		morning [19]	5:4	110:21	115:2		noon [3]	72:10	72:11
merits [3]	7:11	8:23	5:15	5:25	must [1]	75:11		100:21		
9:18			23:5	28:22				Nor [1]	39:4	
mess-up [1]	15:1		63:22	64:3				normal [3]		73:12
message [4]	67:2		67:4	71:12				73:13	82:20	
82:12	88:6	88:7	76:14	76:17				note [4]	11:8	11:14
messages [3]	60:20		85:8	85:21				12:3	12:14	
88:4	101:17		mornings [2]	29:5				notes [4]	12:5	61:14
met [3]	13:8	25:21	94:1					61:15	61:19	
111:4			most [8]	27:20				nothing [6]		12:11
microphone [1]	93:4		33:25	60:7				23:25	52:20	76:1
middle [1]	96:13		94:24	113:18				98:14	98:18	
might [3]	54:5	70:19	mother [15]	56:25				notice [2]	8:17	96:21
72:15			57:1	63:19				noticed [1]		82:19
mike [1]	93:3		64:2	87:23				notified [1]		74:16
miles [1]	89:7		97:25	107:25				now [40]	6:12	6:20
mind [2]	62:12	110:19	112:7	112:10				7:9	7:13	7:14
minimum [1]	15:9		113:2	114:2				8:14	8:25	9:19
Minor [3]	1:9	2:21	mother's [1]	78:5				10:5	10:12	11:14
117:9			motion [10]	4:25				12:5	12:7	12:14
minute [1]	35:20		5:7	18:7				13:5	13:9	16:12
minutes [2]	17:24		39:18	74:17				16:15	20:2	20:14
67:20			74:25	107:5				28:13	29:1	31:17
missed [2]	52:7		mouth [1]	75:14				47:2	70:2	70:7
52:10			move [3]	39:8				71:7	73:9	73:13
			49:11					74:3	78:25	79:1
			moved [5]	39:10				96:25	97:6	98:10

101:1		11:18	14:2	14:3	103:21	103:25	105:6	SBOT [4]	2:3	2:4
recessed [3]	18:1	14:4	14:5	15:4	105:14	106:19	110:12	2:11	2:16	
42:24	101:3	16:9	20:4	40:21	110:24	113:7		schedule [6]		28:20
recitals [1]	11:10	41:1	105:24	111:10	rode [1]	63:23		71:18	72:7	72:21
recognize [1]	113:11	114:14			Ron [1]	46:6		73:2	77:23	
record [16]	1:1	requested [11]	4:21		room [2]	64:5	83:20	scheduled [1]		70:15
4:11	13:21	4:22	7:9	11:19	row [1]	40:1		Schletterbahn [1]		78:4
18:19	19:1	19:14	40:11	57:10	rude [2]	63:12	64:11	school [24]		20:13
41:20	45:2	58:15	61:23	81:14	Rudkin [20]		2:16	20:24	20:25	26:9
107:24	110:22	116:9			2:17	15:23	28:10	50:14	50:17	50:22
116:14	116:18	requests [1]	38:23		69:12	69:14	69:17	54:25	55:7	55:8
Recross [1]	77:14	require [1]	105:19		74:5	92:11	92:12	57:19	58:24	66:20
RE CROSS-EXAMINATION		requires [1]	36:24		101:23	102:25	103:9	70:25	71:2	71:5
[1]	77:15	research [1]	15:11		103:19	104:4	104:15	73:7	93:23	94:1
Redirect [3]	74:7	reserved [1]	16:3		105:4	105:7	111:3	108:7	109:6	109:7
74:8	92:13	residence [4]	48:17		111:8			109:8	111:18	
reduce [1]	97:4	48:17	49:11	59:9	ruining [1]		84:9	Schubert [2]		49:11
reduction [4]	18:8	resisting [1]	10:3		rule [18]	4:21	4:25	49:15		
32:4	32:8	respective [1]	116:16		5:6	5:8	5:18	Scott [1]	106:2	
referred [1]	30:7	responded [1]	86:19		7:18	9:4	21:12	screaming [1]		106:7
reflect [1]	6:25	Respondent [2]	2:15		35:21	38:11	38:14	scrutinize [1]		107:15
reflected [1]	12:23	9:8			38:14	41:6	41:19	scrutiny [2]		109:11
reflective [1]	109:22	response [4]	5:3		45:1	45:9	45:16	109:17		
reflects [1]	116:15	5:17	5:21	5:21	101:11			seal [2]	1:23	116:20
refused [1]	48:2	responsibilities [1]			ruled [1]	109:22		searching [1]		30:6
regard [1]	114:11	108:12			rules [2]	38:11	101:12	seat [4]	4:4	4:4
regarding [1]	93:20	responsibility [2]	57:18		ruling [2]	3:6	16:2	43:1	93:2	
regret [2]	107:20	58:6			run [1]	96:18		seated [1]	18:14	
relatives [1]	112:9	responsible [1]	81:19		running [2]		6:22	second [2]		4:9
relay [1]	60:20	responsive [1]	35:17		84:20			16:4		
relevancy [1]	84:16	rest [4]	42:16	98:5	rushed [1]		23:25	Section [3]		9:4
relieve [1]	90:22	98:5	113:2					9:6	9:24	
remainder [1]	11:22	restaurants [2]	96:21					Security [2]		11:5
Remedies [1]	9:14	100:23						11:21		
remember [17]	32:10	Restrict [1]	38:16		S [6]	2:16	2:17	see [36]	18:21	20:15
42:3	42:7	restrictions [1]	16:21		6:3	6:7	12:24	20:19	22:6	22:9
47:15	47:16	result [1]	16:25		13:10			23:8	24:18	29:4
54:19	55:19	return [10]	6:2		safe [1]	32:13		29:11	30:5	30:15
68:2	68:6	12:16	12:24	13:10	salary [5]	50:20	50:23	33:1	33:1	33:3
99:9	100:8	43:9	43:13	54:7	78:17	97:15	97:16	33:5	33:6	34:12
113:6		72:11	74:14	102:4	sale [3]	8:5	10:23	41:11	47:19	56:6
remind [1]	61:4	returned [1]	74:12		13:4			56:8	56:24	57:22
remodeling [1]	49:16	returning [1]	72:8		sales [2]	27:2	27:3	73:10	76:23	76:24
repayment [1]	11:12	returns [4]	5:24		salon [1]	97:9		83:4	93:2	95:17
repeat [1]	87:16	12:16	14:21	14:25	San [1]	79:23		96:12	96:22	98:10
repeatedly [1]	38:6	reviewing [1]	101:6		sanctions [11]		4:21	101:7	108:20	109:19
rephrase [3]	35:22	ride [1]	64:8		5:18	7:19	14:2	114:24		
36:25	39:7	right [61]	4:12	4:20	14:4	15:8	15:9	seeing [4]	19:22	20:17
report [3]	60:24	5:16	7:14	16:1	16:19	16:21	17:19	34:9	112:15	
109:16	92:7	17:18	18:3	18:10	111:25			seeking [3]		14:11
reported [3]	1:23	18:13	18:15	18:25	Saturday [10]		20:17	15:9	20:11	
102:20	116:13	18:25	19:5	19:8	23:4	29:4	29:14	seem [1]	9:6	
reporter [5]	15:14	21:6	23:14	25:2	30:20	30:20	56:7	segments [1]		30:12
101:22	116:3	33:15	35:4	46:14	71:23	76:2	104:17	sell [4]	11:25	27:12
116:23	116:4	52:12	53:14	55:14	Saturdays [3]		71:11	49:6	100:10	
Reporter's [6]	1:1	61:8	62:2	62:5	71:11	96:1		sells [1]	10:21	
3:14	116:10	65:6	66:3	66:4	saw [1]	46:1		send [1]	56:25	
116:18	117:1	66:24	71:7	74:3	says [15]	6:21	7:8	Senior [1]	1:18	
reports [1]	6:19	75:18	76:22	77:24	8:16	10:20	11:17	separate [9]		4:13
request [20]	5:18	78:25	79:6	83:17	11:19	11:25	12:12	5:2	5:9	9:20
5:19	5:21	84:10	86:8	88:21	12:13	22:17	76:9	10:4	10:6	11:11
8:15	9:10	89:23	90:25	93:5	76:20	94:8	110:9	13:24	14:5	
		93:13	93:14	94:5	113:10			September [4]		58:25
		94:7	99:19	101:14	SBA [4]	11:4	11:17	59:1	71:3	71:4
		103:8	103:15	103:21	11:21	13:5		serious [4]		7:20

76:24	77:1	91:11	75:9	75:10	75:13	Stark [1]	82:14	73:23	77:18	77:25
services [1]		53:25	75:16	75:20	82:5	start [5]	5:20	79:11	100:1	102:7
set [11]	19:24	19:25	Smith's [1]		75:14	71:2	108:7	103:10		
20:5	28:20	35:6	so-and-so [2]		61:16	started [1]		Sunday [4]		20:18
36:8	71:18	72:21	108:11			starting [2]	100:24	20:18	66:17	66:25
79:23	107:6	114:15	soccer [2]	100:3	100:11	105:15	102:1	supervision [1]		108:25
setting [1]		106:8	sold [1]	8:7		state [9]	8:11	support [12]		7:4
settle [2]	19:21	36:6	solely [1]	11:11		11:22	13:21	7:4	13:3	13:19
settled [3]	17:5	109:4	soliloquy [1]		32:11	18:19	19:1	17:9	18:9	27:14
109:5			someone [2]		46:4	116:6		59:4	59:8	59:9
settlement [5]		16:23	47:5			stating [1]	16:18	97:4	99:4	
16:25	17:3	19:19	someplace [1]		79:25	statutes [1]	9:15	supposedly [1]		23:21
40:9			sometimes [7]		21:20	stay [4]	67:7	surprise [1]		9:1
seven [4]	62:4	70:1	53:25	82:25	94:4	109:7	112:12	surprising [1]		113:8
70:2	81:9		94:23	95:6	95:10	staying [1]		sustain [1]		8:2
several [1]		98:6	somewhat [1]		107:23	stays [1]	106:9	sustained [2]		21:6
shape [1]	111:12		somewhere [1]		72:20	Stein [1]	6:5	89:15		
share [2]	10:18	32:24	son [2]	14:15	15:19	stenotype [1]		Sutton [1]	46:6	
shares [1]	12:13		soon [5]	67:17	70:11	step [1]	92:15	swimmer's [5]		86:21
Sherrill [1]		1:18	70:17	100:24	113:5	stick [2]	7:10	89:6	90:18	90:20
shoes [1]	81:7		sorry [5]	30:20	42:20	sticking [1]		91:13		
shopping [1]		98:2	92:17	102:24	106:13	still [4]	20:13	swimming [7]		57:20
short [3]	19:23	32:1	sort [2]	26:19	58:4	67:6	114:12	100:14	102:10	102:12
56:5			sorts [1]	28:25		stipulate [1]		102:22	103:1	103:4
Shorthand [2]		116:3	sought [1]		97:19	stock [5]	8:8	sworn [6]	12:1	14:1
116:23			sounds [1]		15:24	12:11	13:12	18:16	19:11	93:6
show [12]	13:12	13:15	SPCA [9]	62:22	63:24	stop [1]	52:24	93:16		
13:22	19:20	22:1	75:7	76:7	76:11	stopped [1]				
28:24	29:3	29:5	77:5	77:10	82:5	stops [1]	96:17			
55:20	55:22	56:2	82:7			store [16]	4:14	take-home [4]		26:14
114:12			speak [3]	22:18	24:10	50:23	51:7	26:17	50:8	55:11
showing [1]		17:17	110:20			51:21	52:1	taking [9]	7:5	7:6
shown [2]	14:23	108:15	speaking [1]		33:18	61:25	62:8	11:2	12:3	49:18
shows [6]	6:16	6:21	specific [12]		21:15	62:15	71:15	89:7	91:5	104:10
8:23	13:1	68:16	23:25	24:6	25:6	108:23	109:1	114:7		
81:2			30:14	38:18	54:9	straight [1]		talks [1]	10:6	
sic [2]	12:18	106:6	54:11	77:20	78:24	street [3]	49:12	tax [6]	5:24	12:22
side [4]	8:16	27:19	93:10	95:8		75:18	49:15	12:24	13:10	14:20
50:13	112:21		specifically [4]		35:24	strept [3]	86:25	14:24		
sides [1]	112:3		45:10	54:9	57:15	87:6	87:3	taxes [2]	6:19	12:21
signed [1]	35:9		speculate [3]		89:14	stricken [2]	8:19	telephone [15]		7:13
significant [1]		11:10	96:6	96:6		42:16		23:17	62:20	82:1
signs [1]	87:7		speculating [1]		33:14	stuff [5]	7:21	83:6	85:18	86:7
sincerely [1]		108:18	spend [3]	25:4	28:17	90:18	90:20	87:16	87:24	88:15
single [2]	72:1	72:4	95:23			Sub [1]	6:7	88:25	89:1	90:1
sister [4]	75:11	75:23	spending [3]		7:7	Subchapter [2]	6:3	98:22	109:9	
82:14	98:17		26:19	95:14		13:9		telephonic [6]		22:20
sit [2]	96:18	96:22	spent [1]	15:12		such [4]	16:17	85:22	86:5	107:5
sitting [1]	94:7		spirit [1]	114:13		24:7	111:24	109:18	110:3	
situation [7]		17:22	spoke [1]	24:12		suffice [1]	9:15	telling [4]	35:18	68:7
24:10	59:19	69:19	spoken [1]		83:19	sufficient [4]	8:12	83:14	89:3	
69:23	70:5	108:2	spot [1]	77:7		24:24	27:22	temperature [2]		89:11
six [3]	32:2	62:4	spouse [1]		17:17	suggested [3]	35:3	89:22		
70:1			squared [1]		108:6	40:8	57:5	temporary [20]		19:17
sleep [1]	66:21		SR [1]	2:2		Suite [2]	2:6	19:22	20:2	20:11
sleeping [3]		21:3	stand [3]	17:23	42:23	summarily [2]	13:23	21:25	22:3	25:20
23:22	73:12		101:1			16:13		26:1	26:7	27:15
slipped [1]		73:9	standard [3]		30:7	Summary [2]	4:25	30:23	31:12	31:17
smack [1]	12:4		72:3	72:5		5:7		32:10	39:19	41:7
small [1]	73:25		standing [1]		42:13	summer [17]	20:14	96:4	103:15	105:5
Smith [10]		63:10	standpoint [2]		38:10	30:3	30:4	114:16		
63:12	64:3	75:7	38:10			39:11	48:5	ten [9]	58:16	75:17
						58:17	73:8	78:9	78:11	87:19
								87:25	88:2	88:18
								88:23		

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used [8] 11:19 11:21 11:22 57:3 80:11 80:14 81:3 81:5	wanting [1] 106:8	Word [2] 3:15 117:12
uses [2] 61:6 74:15	wants [1] 106:20	words [14] 17:5 21:11 21:13 21:14 24:3 24:25 24:25 33:18 56:11 56:12 75:14 100:19 111:8 112:17
usual [1] 71:14	warrant [1] 14:1	worked [2] 77:11 112:24
usually [5] 21:2 62:16 62:17 73:7 78:23	water [3] 90:22 90:24 92:21	World [1] 7:6
utilities [6] 26:11 26:12 49:25 50:3 59:3 98:19	Wednesday [3] 72:14 73:15 97:11	worry [3] 76:9 84:9 91:6
-V-	week [26] 19:23 20:17 22:7 22:7 22:9 33:4 39:14 39:15 39:20 40:19 40:20 40:23 56:6 56:7 58:25 59:1 72:1 72:4 72:25 73:1 73:22 96:13 102:12 102:13 104:7 104:24	write [1] 50:22
vacation [12] 7:5 23:10 23:12 23:15 23:20 30:25 31:6 31:9 77:23 78:19 78:20 104:11	weekday [1] 57:18	write-off [1] 51:16
valid [1] 1:23	weekend [11] 39:12 39:21 40:1 40:7 57:11 57:16 57:23 96:14 101:24 102:1 105:2	written [1] 61:14
value [4] 10:20 11:25 12:7 13:4	weekends [2] 56:24 72:6	wrong [2] 75:19 85:23
values [3] 33:9 33:11 33:14	weekly [1] 94:3	wrote [2] 50:21 52:12
vehicle [2] 7:23 51:23	weeks [6] 13:7 39:25 72:22 78:21 78:21 79:1	-X-
video [12] 44:24 45:7 45:8 45:11 45:12 45:18 45:24 46:8 46:11 46:16 46:20 47:9	welded [1] 54:13	X [32] 1:3 1:3 1:4 1:4 1:5 1:5 1:6 1:6 1:7 1:7 1:8 1:8 1:9 1:9 3:1 116:1 116:1 116:2 117:3 117:3 117:4 117:4 117:5 117:5 117:6 117:6 117:7 117:7 117:8 117:8 117:9 117:9
view [1] 6:16	welding [1] 54:14	-Y-
visit [2] 72:18 73:23	West [1] 48:17	y'all [3] 96:20 96:21 108:17
visitation [24] 18:7 23:3 28:14 29:25 30:2 30:8 30:11 35:3 39:10 39:15 39:20 40:8 41:2 57:11 57:19 71:22 73:20 101:9 101:24 102:8 103:10 103:23 105:1 108:16	wherein [1] 4:22	y'all's [1] 97:16
Voir [1] 3:8	whole [5] 31:18 49:17 49:18 91:15 91:18	yard [3] 44:12 44:22 49:14
volume [1] 116:10	wife [21] 11:9 12:22 16:10 20:4 21:1 22:14 22:17 30:24 31:7 33:9 33:21 43:5 44:21 49:10 53:4 66:11 73:16 74:11 80:15 85:6 85:14	year [24] 5:25 6:10 6:18 7:3 7:4 13:1 26:24 27:2 27:6 27:6 27:7 34:25 50:14 51:1 55:1 55:17 55:18 55:20 55:22 55:25 78:20 80:23 97:18 100:4
voluntarily [1] 60:25	wife's [2] 27:19 72:11	years [17] 5:25 9:21 9:22 26:23 26:25 34:11 44:10 44:11 53:6 55:18 62:4 62:15 75:17 80:18 81:9 81:10 111:6
volunteer [7] 24:4 25:6 38:7 38:8 38:19 40:22 93:11	willing [1] 15:17	yesterday [4] 52:13 52:16 63:21 64:7
volunteering [1] 38:13	window [1] 61:11	yet [2] 6:18 86:1
-W-	wish [1] 22:18	young [1] 113:8
wait [2] 8:22 95:4	withdraws [1] 114:14	yourself [11] 26:20 38:16 51:25 54:16 54:18 54:23 55:9 56:1 62:12 80:8 92:22
waited [1] 8:25	within [3] 35:13 35:25 71:18	
waiting [1] 96:2	without [8] 4:25 5:6 5:6 5:7 23:23 79:17 84:10 113:25	
wake [3] 66:22 66:22 67:6	witness [28] 18:16 18:17 18:20 19:3 21:8 21:16 21:22 24:8 25:8 28:8 31:25 34:19 35:18 37:25 38:19 42:17 42:20 68:11 68:13 89:16 92:17 92:20 92:23 93:6 93:7 93:12 94:8 116:20	
walk [5] 44:24 76:5 77:7 83:16 84:6	WITNESSES [1] 3:7	
walk-through [8] 44:25 45:5 45:11 45:13 45:13 45:24 46:21 47:9	woman [1] 83:19	
walked [2] 76:4 76:17		
wallet [1] 80:13		



IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT

GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

INVENTORY AND APPRAISEMENT OF KENNETH KYLE BIEDERMANN

TO THE HONORABLE COURT:

KENNETH KYLE BIEDERMANN, Respondent, submits this inventory and
appraisalment of all assets and liabilities, community and separate estates, as follows:

COMMUNITY ESTATE OF THE PARTIES

16. 1. REAL PROPERTY:

Street Address: 110 W. Hackberry

County of location: Gillespie County, Texas

Description of improvements: Single Family Residence

Legal Description:

Lot 8, Block 1, Burgdorf Addition, an addition in Fredericksburg,
Gillespie, County, Texas, according to the map or plat of record in
Volume 13, Page 481, Deed Records of Gillespie County, Texas.

FILED
At 3:55 O'clock P M

AUG 10 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer

Current fair market value: \$130,000.00 as of March 1, 2001.

Name of Mortgage Company: Greenpoint Mortgage, Acct. No. 0008783847

Current Balance of first mortgage: \$67,165 as of May, 2001.

Home equity loan: BankOne

Current balance of home equity loan: Approximately \$22,000.00 as of May, 2001.

Current Net Equity in Property: Approximately \$40,000.00

2. CASH AND ACCOUNTS WITH FINANCIAL INSTITUTIONS (include cash, travelers checks, money orders and accounts with commercial banks, savings and loan associations, credit unions, and brokerage houses and exclude any form of retirement account)

2.1 Exact name of financial institution: Security State Bank

Account number: 3012614

Exact name on account: Kyle Biedermann or Avian A. Biedermann

Type of account (checking, savings, money market, certificate of deposit):
Checking

Exact name(s) on withdrawal cards: Kyle Biedermann or Avian A. Biedermann

Current account balance: \$19.00
(as of May, 2001)

2.2 Exact name of financial institution: St. Joseph's Credit Union

Exact account name: Avian A. Biedermann
The Primrose Path Salon

Account number: 2437101

Type of Account: checking

Exact name on withdrawal card: Avian A. Biedermann

Current Account balance as of July 16, 2001. -\$17.64

3. ACCOUNTS RECEIVABLE (personal receivables, including any expected federal or state income tax refund) (do not include receivables connected with a business)

3.1 Name of debtor: NONE

Debtor's relationship to you:

Purpose of loan: N/A

Is debt evidenced in writing?

No

Is debt secured?

No

If so, detail security:

Is debt reasonably expected to be paid?

No

Current loan balance: \$0.00

(as of May, 2001)

4. RETIREMENT ACCOUNTS (KEOGH, IRA, SEP, ETC.)

a. Exact name of financial institution: NONE

b. Exact account name:

Account number:

Account balance as of date of marriage: NONE

Payee of survivor benefits: N/A

Has a beneficiary been designated?

No

If so, identify beneficiary: None

Current community account balance: \$0.00
(as of May, 2001)

7. OTHER DEFERRED COMPENSATION BENEFITS (e-g., workers' compensation, disability benefits, renewal commissions, covenants not to compete, bonuses and other special payments, employee stock options, and other forms of executive compensation)

7.1 Husband--description of assets: NONE

Value: \$0.00

7.2 Wife--description of assets: NONE

Value: \$0.00

8. LIFE INSURANCE AND ANNUITIES

a. Exact insurance company name: Northwestern Mutual

Policy number: 6751756

Name of insured: Kyle Biedermann

Name of owner: Kenneth P. Biedermann

Type of insurance (term/whole/universal): whole life

Amount of premiums and date due: \$ 213.86 yearly

Date of issue: 10/31/1973

Face amount: \$22,788.00

Cash surrender value on date of marriage: \$1200.00

Current cash surrender value: \$200.00

Beneficiary: Kathryn Bidermann

Is there a loan against this policy? Yes

If yes, explain: Payments have not been made recently

8.2 Exact insurance company name: Farmer's Life

Policy number: 006096134

Name of insured: Kyle Bidermann

Name of owner: Bidermann's Ace Hardware

Type of insurance (term/whole/universal): term

Amount of premiums and date due:
\$ 122.75 quarterly

Date of issue: Unknown

Face amount: \$300,000.00

Cash surrender value on date of marriage: \$0.00

Current cash surrender value: \$0.00

Beneficiary: Bidermann's Ace Hardware

Is there a loan against this policy? No

9. PUBLICLY TRADED STOCKS, BONDS, AND OTHER SECURITIES (exclude securities held in brokerage accounts and/or retirement accounts that are described herein)

9.1 Security name: NONE

Number of shares: NONE

10. CLOSELY HELD BUSINESS INTERESTS (include sole proprietorships, professional practices, partnerships, joint ventures, and other nonpublicly traded corporate business entities, etc.)

10.1 Exact name of business: Primrose Path Salon

Address: 110 West Hackberry Street, Fredericksburg, Texas

Date business began: Unknown

Type of business organization: Sole Proprietorship

Percentage of ownership:

Number of shares owned (if applicable): None

Estimated value: Unknown
(as of May, 2001)

11. MOTOR VEHICLES, BOATS, AIRPLANES, CYCLES, ETC. (exclude company-owned vehicles)

11.1 Year: 1999

Model: Pontiac Grand An

Name on certificate of title: Avian Ann Biedermann

In possession of: Wife

Vehicle identification number: 1GNW52E3XM813480

Does vehicle have loan against it?

Yes

If yes, state:

Exact name of creditor: Wells Fargo Auto Financing

Current balance: \$14,850.50

as of June 1, 2001

Current net equity in vehicle: -\$3,475.50

12. HOUSEHOLD FURNITURE, FURNISHINGS, AND FIXTURES:

- 12.1 In possession of husband: Bar BQ grill \$400.00
- 12.2 In possession of wife: All furniture \$10,000.00
13. MISCELLANEOUS SPORTING GOOD AND FIREARMS
- 13.1 In possession of husband: NONE
- 13.2 In possession of wife: rifle and handgun unknown
14. ANTIQUES, ARTWORK, AND COLLECTIONS
- 14.1 In possession of husband none
- 14.2 In possession of wife
- G.Harvey Prints (4) \$800.00
15. ELECTRONICS AND COMPUTERS
- 15.1 In possession of husband
None
- 15.2 In possession of wife
Windows 95 computer and software \$500.00
16. CLOTHING, JEWELRY, AND PERSONAL ITEMS
(list major items and state value)
- 16.1 Husband (attach list if necessary): Clothing and wedding ring
- Value: \$500.00
- 16.2 Wife (attach list if necessary): unknown
- Value: \$unknown
17. LIVESTOCK (include cattle, horses, etc.)
- 17.1 In possession of husband:
Description: NONE
- Value: \$0.00
- 17.2 In possession of wife: NONE
Description:
Value:\$0.00
18. CLUB MEMBERSHIPS

a. Exact name of club: Fredericksburg Fitness

b. Current value: \$75.00

(as of May, 2001))

Method of valuation: Three months of membership left at \$25.00/month

19. FREQUENT FLYER MILEAGE ACCOUNTS

19.1 Exact name of airline:

Current number of miles: NONE

(as of May, 2001)

Value (if any): NONE

20. MISCELLANEOUS ASSETS (intellectual property, licenses, crops, cemetery lots, gold or silver coins not part of a collection described elsewhere herein, tax overpayments, loss carry-forward deductions)

20.1 In possession of husband: NONE

Description:

Value:\$0.00

a. In possession of wife: UNKNOWN

Description:

Value:

21. COMMUNITY CLAIM FOR REIMBURSEMENT AGAINST HUSBAND'S OR WIFE'S SEPARATE ESTATE

21.1 Reimbursement claim against husband's separate estate:

Description: By opposing counsel:

21.11 Actual Fraud

21.12 Breach of Fiduciary Duty Community Opportunity and Jeopardy
Doctrine

21.13 Time, Talent, Labor, Money or Property

Amount claimed: \$225,000.00

21.2 Reimbursement claim against wife's separate estate:

Description: No claim

Amount claimed: \$0.00

22. CONTINGENT ASSETS AND CLAIMS (e.g., lawsuits against someone)

22.1 Nature of claim: NONE

16. COMMUNITY LIABILITIES ATTORNEY'S FEES IN THIS CASE

23.1 Husband: \$10,800.00
(as of July 2001)

23.2 Wife: \$76,926.90
(as of July, 2001)

OTHER PROFESSIONAL FEES IN THIS CASE

23.3 Husband: Dr. Jack G. Ferrell \$2,800.00
(as of July, 2001)

23.4 Wife: unknown

CREDIT CARDS AND CHARGE ACCOUNTS

a. Exact name of creditor:

MBNA, #4313025873006275	\$2256.00
MBNA, #4800121769133693	\$6000.00
Household, #5404240000057680	\$700.00
Capital One, # 4305 7219 2332 2882	\$4700.00
Farm Plan, #7537437452	\$1200.00

FEDERAL, STATE, AND LOCAL TAX LIABILITY

23.6 Amount owed in any previous tax year: NONE
(describe liability, such as federal income tax, property taxes)

Amount you owe for current year: Unknown, tax return extension filed

OTHER LIABILITIES NOT PREVIOUSLY LISTED
IN THIS INVENTORY

23.7 Exact name of creditor: Heritage Family School

Is loan evidenced in writing?

Yes

Current balance: \$1,100.00

(as of May, 2001)

Security, if any: None

23.8 Exact name of creditor: Kenneth Biedermann, loan to Kyle and Avian to pay
down payment on first home purchased.

Is loan evidenced in writing? NO

Current balance: \$8000.00

24. REIMBURSEMENT CLAIMS BY HUSBAND'S SEPARATE ESTATE OR WIFE'S
SEPARATE ESTATE AGAINST COMMUNITY ESTATE

24.1 Reimbursement claim by husband's separate estate against community estate: NONE

Value: \$ 0.00

24.2 Reimbursement claim by wife's separate estate against community estate: unknown

Value:

25. CONTINGENT LIABILITIES (e.g., lawsuit against either party, guaranty either party may have signed)

25.1 Name of creditor: NONE

TRUST, ESTATE, AND CUSTODIAL ASSETS
(include formal and informal trusts)

26. ASSETS HELD BY OR FOR EITHER PARTY AS A FIDUCIARY OR A BENEFICIARY

26.1 Asset held by either party as a fiduciary: NONE

Description of asset:

Exact name of account:

Name and title of fiduciary (e.g., executor):

Name of owner of beneficial interest:

Estimated value of asset: \$0.00

26.2 Asset held for either party as a beneficiary: NONE

Description of asset:

Exact name of account:

Name and title of fiduciary (e.g., executor):

Name of owner of beneficial interest:

Estimated value of asset: \$0.00

26.3 Custodial account under the Texas Uniform Gifts to Minors Act: NONE

Name of financial institution:

Exact name of account:

Account number:

Amount on deposit:

Name of minor for whom funds were deposited:

Social Security number of minor:

Name of administrator:

SEPARATE ESTATES OF THE PARTIES

27. SEPARATE ESTATE OF HUSBAND

FOR EACH ASSET OR LIABILITY ASSERTED TO BE SEPARATE PROPERTY, USE DESCRIPTIONS AND INSTRUCTIONS IN THE CATEGORIES LISTED IN THE PRECEDING PART ENTITLED "COMMUNITY ESTATE OF THE PARTIES." BE SURE TO INCLUDE REIMBURSEMENT CLAIMS. GIVE THE INFORMATION REQUESTED IN THOSE CATEGORIES AND ADD THE FOLLOWING INFORMATION FOR EACH ASSET OR LIABILITY.

27.1 Description of asset: BL&H, Inc. dba Biedermann's Ace Hardware

Date property acquired: May 5, 1994

How acquired (e.g., by gift, by devise, by descent, or owned before marriage): GIFT

Value: Net Equity: -\$45,140.27 as of April 30, 2001

27.2 Description of liability: See balance sheet of April 30, 2001

a. Miscellaneous separate property:

Acquired before marriage:

Old style Coke Machine
Round Dining Room Table
G. Harvey Prints
Small PineDesk (clear finish)
Cash Register
Old School Desk
Rocking Chair in Children's Room
Brown Trunk in Living Room
Wooden Filing Cabinets
Wagon Wheels
Adirondeck Chairs (2)

Acquired by Gift:

Claw Foot Tub
TV in Children's Room
8-foot tall bookcase in beauty shop
Miscellaneous building materials including lumber, doors, windows

Other Property in possession of wife, not owned by either spouse:

Lawn Mower--owner, Kenneth P. Biedermann
Small Refrigerator--owner, Kenneth P. Biedermann
Antique twin beds in garage--owner, Kenneth P. Biedermann
Wooden chairs--owner, Kenneth P. Biedermann

Other property in possession of wife that is to be divided:

Family photographs
Books
Household items and small appliances

28. SEPARATE ESTATE OF WIFE

28.1 Description of asset: NONE

Date property acquired:

How acquired (e.g., by gift, by devise, by descent, or owned before marriage):

Value: \$0.00

VERIFICATION

I, KENNETH KYLE BIEDERMANN, state on oath that, to the best of my knowledge and belief, this inventory and appraisal contains—

1. a full and complete list of all properties in my possession or subject to my control that I claim belong to the community estate of me and my spouse, with the values thereof;
2. a full and complete list of all properties in my possession or subject to my control that I claim or admit as my or my spouse's separate property and estate, with the values thereof; and
3. a full and complete list of the debts that I claim are community indebtedness.

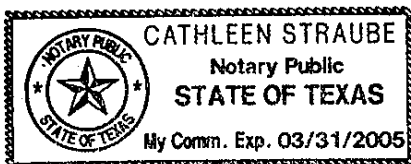
I make this affidavit with the following reservations and qualifications:

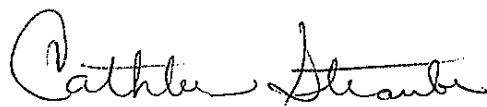
1. Any omission from this inventory is not intentional but is done through mere inadvertence and not to mislead my spouse.
2. There may be other assets and liabilities of which my spouse is aware, and their omission from this inventory should not be construed as a waiver of my interest in those items.

SIGNED on August 10, 2001.


KENNETH KYLE BIEDERMANN

SIGNED under oath before me August 10, 2001.




Notary Public, State of Texas

My Commission Expires:

INSTRUCTIONS FOR PREPARATION FOR INVENTORY AND APPRAISEMENT

CLIENT'S NAME: KENNETH KYLE BIEDERMANN DATE: July 1, 2001

1. General Instructions

Accurate information concerning property and debts is very important in divorce cases. Please fill out the attached form as completely as you can, drawing on any source of information to which you have access. Do not enlist your spouse's help unless I specifically permit it. DO NOT LET ANYONE SEE THIS DOCUMENT. THIS PREPARATION FOR YOUR INVENTORY AND APPRAISEMENT IS A CONFIDENTIAL MATTER BETWEEN YOU AND YOUR ATTORNEY. Be cautious. You and your spouse are now legal adversaries, and you should verify all information on your own. Especially when it comes to questions of the present value of property, you should make your own independent estimate.

The attached form provides for only a few items under each type of property. If you need to provide additional information, photocopy an extra page or use a separate piece of paper and number the information as it is numbered on the inventory. If you do not know the answer to an item, do not leave it blank; write "I don't know."

This task will not be easy. Do not expect to complete the form at one sitting. Be assured, however, that your effort is necessary and worthwhile.

2. Property Division

In addition to factual data I need to know your desires about division of the property. Please indicate your desires in the left margin of the form by placing a "W" next to items you want to go to the wife and an "H" next to items you want to go to the husband.

16. Definitions

a. Separate Property

Property acquired by a spouse before marriage and property a spouse acquired individually by gift or inheritance during marriage are considered to be separate property of that spouse. If you or your spouse have any property you think is separate property, complete the sections marked "Separate Estate of Husband" and "Separate Estate of Wife."

b. Community Property

All property that is not separate property is community property.

C. Fair Market Value

A generally accepted definition of fair market value is the price at which the asset would change hands between a willing seller, under no compulsion to sell, and a willing buyer, under no compulsion to buy, with both parties having reasonable knowledge of the relevant facts. Use this value whenever possible. If an asset has no fair market value, state the actual value of the asset to you considering its present condition.

4. Copies of Documents To Be Returned

If an asset has a statement of account, return a copy of the current statement of account with this Preparation for Inventory and Appraisal. If an asset has a title document (deed, deed of trust, certificate of title to motor vehicle) return a copy with this Preparation for Inventory and Appraisal.

If an asset has any document that can clearly identify it, return a copy with this Preparation for Inventory and Appraisal.

Here is a checklist of copies of items you should return with this Preparation for Inventory and Appraisal:

1. financial institution statements;
2. bank statements;
3. Keogh statements;
4. IRA statements;
5. SEP statements;
6. certificate of deposit statements;
7. company retirement benefits statements of account;
8. life insurance policies and premium notices;
9. broker statements;
10. deeds;
11. deeds of trust;

12. mortgage company payment coupon books (usually one page is enough);
13. certificates of title to motor vehicles;
14. stocks;
15. last statement from each creditor, including credit card statements;
16. any other documents that may lead to the discovery of assets or liabilities.

5. Full Disclosure

Finally, I will rely on this Preparation for Inventory and Appraisalment in the case. If you omit any asset, the court could set it aside to your spouse now or at a later date. If you omit a liability, you may be solely responsible for it. By your signature below, you verify to me that these are all the assets and liabilities of community and separate property of which you have knowledge.

VERIFICATION

"I have read these instructions and I state that all the community- and separate-property assets and liabilities are fully disclosed on the attached Preparation for Inventory and Appraisalment of KENNETH KYLE BIEDERMANN.


KENNETH KYLE BIEDERMANN

DATE:

Certificate

I, Alan J. Halm, certify that a true and correct copy of Kenneth Kyle Dickinson's Inventory and Appraisement was ~~read~~ before me to the best of my knowledge of John Nichols, attention John Nichols, on the 10th day of August, 1900.

A. J. Halm,
Attorney for
Kenneth Kyle Dickinson

OFFICE OF THE CLERK OF THE DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

OFFICE OF THE CLERK OF THE DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

FILED
At 9:50 O'clock A M

CAUSE NO. 9284

AUG 20 2001
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

IN THE MATTER OF)
THE MARRIAGE OF)
)
AVIAN ANNE BIEDERMANN)
AND)
KENNETH KYLE BIEDERMANN)
)
AND IN THE INTERESTS OF)
KYLA RAE BIEDERMANN,)
EMILY LAINE BIEDERMANN,)
LOREN NOEL BIEDERMANN AND)
DANA TRUE BIEDERMANN,)
MINOR CHILDREN)

IN THE DISTRICT COURT OF

GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

EMERGENCY SUI SPONTE ORDER

On this the 20th day of August, 2001, the Court has heretofore ascertained and learned from two credible professionals that the original Respondent, KENNETH KYLE BIEDERMAN, in the above numbered and styled cause, being the natural Father of the four (4) minor children involved in this matter, has and continues to ignore, violate and disregard the Court's Orders, admonishments and instructions with reckless abandonment, impunity, knowingly, purposely and malevolently to the great harm, detriment, emotional stability, ^{abuse of} and above said minors by:

- (1) His sleeping arrangement with said minors; and,
- (2) degrading the minors' mother in their presence.

THEREFORE, the Court does make and enter the following Orders which are effective immediately for the protection of said minors and for their best interest.

- (1) The original Petitioner, AVIAN ANN BIEDERMAN, the natural mother, shall be the sole temporary managing Conservator of the four minor children with all the power, authority, duties, etc., as provided by law.

- (2) Until further Orders of this Court, the natural Father, KENNETH KYLE BIEDERMANN, the original Petitioner, shall have no contact or communication, in any manner, way, form or fashion, ^{WITH SAID MINORS @} until further Orders of this Court. Moreover, said Father shall not go, for any reason, within one hundred (100) yards of the original Petitioner's residence and/or where a reasonable person would anticipate said minors being at such time, including schools, churches, etc.
- (3) Any and all Orders and agreements heretofore made in this case, not in conflict with this Order, ^{that is} or do not violate the intent or spirit of this Order, shall remain in full force and effect.
- (4) The Father shall not contact and/or attempt to contact, in any manner, the Mother, except by or through his attorney, the attorney ad litem in this cause, Dr. Jack Ferrell or such party the said Dr. Jack Ferrell shall designate in writing.
- (5) The Father shall present to the Court within ten (10) days from the date hereof in writing and sworn to:
- (a) Why his parental rights should not be summarily terminated;
 - (b) why all of his pleadings should not be struck;
 - (c) why all of the fees of the attorney ad litem should not be paid by him;
 - (d) why all costs of Court should not be assessed against him;
 - (e) why all costs of the Plaintiff's attorney's fees should not be assessed against him;
 - (f) why it should not be determined that he is in contempt of Court, be fined and/or incarcerated in the Gillespie County Jail; or
 - (g) that the information furnished to the Court is untrue and/or not accurate.

All matters herein are subject to revisions, modifications and others by this Court.

Signed this the 20th day of August, 2001.


CHARLES SHERRILL
Senior Judge

Copy Faxed To (per Judge Sherrill)
Atty John Nichols & Atty Pamela K. Bergman
Atty Allen (Jody) Halm
Atty Kurt Rudkire
Dr. Jack G. Ferrell, Jr.
8-20-01 *lm*

(No Service Per Judge Sherrill)

OFFICE OF THE CLERK
COURT OF APPEALS
MONTANA

VI 0:00 PM 01
FILED

REPORTER'S RECORD

TRIAL COURT CAUSE NO. 9284

IN THE MATTER OF	X	IN THE DISTRICT COURT
THE MARRIAGE OF	X	
AVIAN ANN BIEDERMANN	X	
AND	X	
KENNETH KYLE BIEDERMANN	X	216TH JUDICIAL DISTRICT
AND IN THE INTEREST OF	X	
KYLA RAE BIEDERMANN,	X	
EMILY LAINE BIEDERMANN,	X	
LOREN NOEL BIEDERMANN,	X	
AND DANA TRUE BIEDERMANN,	X	
MINOR CHILDREN	X	GILLESPIE COUNTY, TEXAS

* * * * *

TELEPHONIC CONFERENCE

* * * * *

On Wednesday, the 22nd day of August, 2001, from 1:33 o'clock p.m. to 1:50 o'clock p.m., the following proceedings came on to be heard in the above-entitled and numbered cause; before the Honorable Charles Sherrill, Senior Judge Presiding, held in Kerrville, Kerr County, Texas:

FILED
 At 10:48 O'clock A.M.

SEP 14 2001

BARBARA MEYER
 DISTRICT CLERK
 GILLESPIE COUNTY, TEXAS
[Signature]

Proceedings reported by computerized stenotype machine, valid if it bears my raised seal.

Cindy E. Snider
CSR No. 2739

APPEARANCES

1
2 MR. JOHN NICHOLS, SR.
Attorney at Law
3 SBOT No. 14996000
4 MS. PAMELA K. BERGMAN
Attorney at Law
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(713) 654-0706 - Fax
8

9 For the Petitioner, Avian Ann Biedermann

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11 SBOT No. 08804350
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(830) 997-9485 - Fax
14

15 For the Respondent, Kenneth Kyle Biedermann

16 * * * * *

17 I N D E X

18 AUGUST 22, 2001 Page

19 Proceedings 3

20 Court Reporter's Certificate 17

21 Key Word Index 18

22

23

24

25

1 (By telephone conference call:)

2 THE COURT: All right, Madam Reporter,
3 if you would reflect this is the 22nd day of August,
4 2001. We are in the 216th Judicial District Court of
5 Kerr County, but I believe this is a Gillespie County
6 matter, the Biedermann versus Biedermann divorce
7 matter, and this is Charles Sherrill; and,
8 Mr. Nichols, are you there?

9 MR. NICHOLS: Yes, I am here, Judge,
10 along with Pamela Bergman.

11 THE COURT: All right, and Mr. Halm is
12 there?

13 MR. HALM: Yes, Your Honor.

14 THE COURT: I have the official court
15 reporter of the 216th Judicial District Court, the
16 Honorable Cindy Snider, here, and let me just state
17 right up front, gentlemen and lady, that I am the one
18 that initiated this last order. I had no direction
19 or so forth, but I did - will state right up front
20 that I had a conversation with Kurt Rudkin and
21 following the time that in which I had talked to
22 Dr. Ferrell's report.

23 I do find and I am very concerned,
24 and, Mr. Halm, I think your client is possibly very
25 ill, very sick, and I was well aware that he was

CINDY E. SNIDER
OFFICIAL COURT REPORTER
P. O. BOX 293251
KERRVILLE, TEXAS 78029-3251 (830) 257-5063

1 fudging and making declarations against interest and
2 against the spirit and intent, if not the actual
3 violation of the Court's orders about sleeping
4 arrangements, and that after talking with Dr. Ferrell
5 and finding out the second tape was made last
6 Wednesday night, the 15th of August, I felt I had no
7 alternative other than to protect those little girls,
8 and I did talk - I believe Mr. Nichols had called -
9 which I thought would be a conference call. The only
10 conversation I had with him was that he asked me what
11 he could do and I said nothing and that concluded the
12 conversation; but over the weekend - and Kurt Rudkin
13 had already expressed concern early Friday afternoon
14 and so forth about the visitation that weekend, and I
15 let it - let it go ahead and proceed.

16 But as I see, we have a situation
17 where a father is creating havoc with little girls.
18 I have not heard this case in full. I have not tried
19 it, so I am not making final orders. I'm only saying
20 that this is what the Court perceives and I feel it's
21 my duty, obligation and responsibility to do this,
22 what I have done.

23 One, I find that the father is
24 creating a situation where those girls, when they're
25 teenagers, they're going to be something hard to

1 handle sexually, and I find also that in the event
2 this manner of conduct continues, that when they're
3 up age to be married, there will be all kinds of
4 reactions. They will be hiding out things from
5 people and so forth. They are being taught to
6 connive against responsible people, against possibly
7 their mother, their spouse and even, probably later,
8 their father. In other words, I do deem and find
9 that this is mental abuse.

10 Now, gentlemen, this was my own action
11 and I'm not saying that I'm going to relax any one or
12 more of those situations that I have instilled there
13 in the temporary orders. These are temporary only.
14 I have not heard the case. We will have a full
15 hearing on the situation, but now, counsel, you may
16 ask questions.

17 MR. HALM: Your Honor, this conference
18 call was to respectfully request that you rescind
19 your order and Mr. Biedermann the visitation that was
20 missed on Tuesday night. The grounds for that are
21 this order arose out of ex parte communication.

22 THE COURT: I respectfully deny your
23 request and respectfully deny that it arose out of ex
24 parte communication. I am doing this as a result of
25 conference with the expert, Dr. Ferrell, and my own

1 personal knowledge of the things that had happened
2 and, sir, the thing is that I am doing this in
3 protection of the children. You may say it was ex
4 parte, but when a child is in danger, the Court has
5 the official power, authority and may act, and I have
6 acted.

7 MR. HALM: Your Honor.

8 THE COURT: Yes, sir.

9 MR. HALM: For the record and for your
10 evidentiary conclusion, Mr. Biedermann has had no
11 sleeping arrangements at all with the children for
12 the past month.

13 THE COURT: Let me say this ---

14 MR. HALM: The information that you
15 received from Jack Ferrell was stale. He did not
16 give me a chance to update him. He has refused to
17 cooperate with Mr. Biedermann, to hear any statements
18 from him. I think that your information, while ---

19 THE COURT: Sir, just one minute. The
20 thing is I am not concerned whether -- you know good
21 and well that it happened during the Florida trip.
22 He made admissions to the Attorney Ad Litem, sir. I
23 am not concerned whether it happened last night, the
24 night before or so forth, but I am primary concerned
25 about the mental abuse, and I will not rescind my

1 order, because I am trying to protect those girls and
2 you best -- Mr. Halm, I'm suggesting to you that you
3 better talk to your client and get some matters
4 straight.

5 I have not heard this case, but I am
6 saying this: Until you can come, we can have a full
7 hearing and you can convince me of this, I say that
8 the information appears - appears that it has been
9 done that way.

10 Now, you accept your client's word. I
11 don't accept your client's word at this point. I am
12 willing to listen to him in court, but I think his
13 credibility has been demolished, but I am willing to
14 give him a full, fair hearing, but the thing is, he
15 has made admission as to Kurt Rudkin and he has made
16 admission as to Dr. Ferrell about the sleeping, and
17 whether it happened a month before or not, I'm not
18 concerned. It violated the Court's order, so he is
19 substantially in contempt of Court, but I am willing
20 to listen and see what we can do to work out, to
21 modify these arrangements, but I feel like these
22 girls are going to have to have a lot of high-priced
23 psychological, and from a psychiatrist, treatment,
24 too.

25 Mr. Halm, you may make your point.

1 MR. HALM: Your Honor, I respectfully
2 request that you set an evidentiary hearing on this
3 matter immediately.

4 THE COURT: All right. We will have
5 Becky see what date she can work.

6 MR. HALM: I am available every day.

7 THE COURT: Just a minute, we'll get
8 Becky.

9 MR. HALM: Fifth, sixth, tenth and
10 eleventh.

11 (Brief delay.)

12 THE COURT: Becky is coming.

13 MR. NICHOLS: Judge, what I would
14 recommend and request is that if Mr. Biedermann has
15 anything he feels are in his behalf to rebut some of
16 the claimed inaccuracies in Dr. Ferrell's report -
17 excuse me, Dr. Ferrell's report, that he produce
18 those people for Dr. Ferrell to talk to, examine or
19 otherwise confer with so that Mr. Biedermann's
20 position is entirely clear to Dr. Ferrell from
21 Mr. Biedermann's viewpoint.

22 MR. HALM: Mr. Nichols, we attempted
23 to do that on Tuesday. We received this order on
24 Monday saying we were not to have any contact with
25 Dr. Ferrell ---

1 THE COURT: Sir, I don't think
2 that ---

3 MR. HALM: --- and we cancelled that
4 appointment.

5 THE COURT: Sir, I don't think there
6 was any statement in there that said you could not
7 contact Dr. Ferrell. If it is, it's a mistake, but
8 Becky is here. We'll get you the hearing.

9 MS. BERGMAN: I think I can clear that
10 up for you. Under No. 4 of the Judge's order it
11 states "The father shall not contact and/or attempt
12 to contact in any manner, the mother, except -
13 except, number one, by or through his attorney;
14 number two, the Attorney Ad Litem in this cause;
15 number three, Dr. Jack Ferrell or such party that
16 said Dr. Ferrell shall designate in writing."

17 Now, that's what it says. It does not
18 say anything about the father shall not contact
19 Dr. Ferrell. It says he shall not contact the mother
20 unless it's by and through Dr. Ferrell or another
21 party that Dr. Ferrell designates in writing. I
22 think you misread that, Mr. Halm.

23 MR. HALM: It's very possible I did.
24 I was trying very hard to be in compliance under this
25 expected order, and, certainly, Your Honor, we will

1 respect this order, but we ask it be set immediately
2 for trial. If you direct that we get his witnesses
3 down there, we will do that immediately.

4 THE COURT: I'll tell you what, I'm
5 willing to start even on a Saturday, whatever.

6 MR. HALM: That would be - that would
7 be fine, Your Honor. I would love to do anything to
8 get this thing resolved. I think we are experiencing
9 a travesty of justice here because of misinformation
10 and we have never had a chance to let anyone know
11 about our position. Dr. Ferrell, in his
12 interpretation, in his communication with the kids
13 has consistently asked about sexual abuse matters,
14 has never inquired ---

15 THE COURT: I am not saying direct
16 sexual abuse matters, Mr. Halm. I'm not making that
17 allegation. Please understand, I'm talking about
18 mental abuse; but Ms. Henderson is here. I'll let
19 you set the matter, whatever time you can agree. I'm
20 willing to meet you nights, days, mornings, from 6:00
21 a.m. until midnight, on Saturdays or whatever.

22 MR. HALM: Thank you, Your Honor.

23 MS. HENDERSON: Okay.

24 MR. NICHOLS: Your Honor, I think,
25 obviously ---

1 THE COURT: Just a minute.

2 MR. NICHOLS: --- Dr. Ferrell, since
3 he's not a party to this conference call, it might be
4 a good idea to see when he has a couple of days
5 available here immediately and see if we can't get
6 this matter into at least a temporary hearing as soon
7 as possible.

8 THE COURT: All right, I'm letting
9 Ms. Henderson set the date. Thank you.

10 MS. HENDERSON: Okay. The Judge has
11 left the room. Here's the dates: We can start
12 tomorrow. He has -- are we going to need one or two
13 days?

14 MR. NICHOLS: I expect we're going to
15 take at least two days to have Mr. Halm be able to
16 produce his witnesses, and I would like to
17 ascertain -- if you will continue the conversation, I
18 will go to another phone and try to ascertain from
19 Dr. Ferrell when he would be available to carve out
20 that kind of time, and knowing that Judge would be
21 available on a Saturday, I'll even ask him to take
22 that into consideration.

23 (Judge Sherrill again present:)

24 MS. HENDERSON: Okay. Why don't I
25 give you the dates that we've got here.

1 MR. NICHOLS: Yes, ma'am, thank you.

2 MS. HENDERSON: Okay, I've got
3 tomorrow and Friday and Saturday, if we need it.
4 Then the week of August 27th, Judge Sherrill is going
5 to be in Edwards County doing a jury trial, so that's
6 out. I've got one day on September the 4th. I've
7 got September 11th and 12th.

8 MR. HALM: I have conflicts.

9 THE COURT: You have conflicts with
10 all those?

11 MS. BERGMAN: Is the conflict a
12 preferentially set trial?

13 MR. HALM: Yes, it is, before Judge
14 Sherrill.

15 MS. HENDERSON: On which days?

16 MR. HALM: September 11th.

17 MS. HENDERSON: You have a
18 preferential set on September 11 with Judge
19 Sherrill?

20 MR. HALM: Well, we're subject to
21 jury.

22 MS. HENDERSON: Okay, that's not with
23 Judge Sherrill. Which case is that?

24 MR. HALM: That's Mahan versus City of
25 Fredericksburg.

1 MS. HENDERSON: Oh, that's Judge
2 Ables.

3 MR. HALM: That's Ables?

4 MS. HENDERSON: Yeah.

5 MR. HALM: Okay, thank you, Becky.

6 MS. HENDERSON: Yeah, that's Judge
7 Ables and I have two jury trials ahead of you, so we
8 could set it subject to that, and then after that I
9 have the 19th and 20th of September.

10 THE COURT: Or any Saturday.

11 MS. HENDERSON: And any ---

12 MR. NICHOLS: Ms. Henderson.

13 MS. HENDERSON: Yes.

14 MR. NICHOLS: This is John Nichols,
15 and since we have these dates, what I would like to
16 do is to check with Dr. Ferrell's office and see if
17 we can mesh this together.

18 MS. HENDERSON: Okay. Now, you do
19 understand that we can do this any Saturday?

20 MR. NICHOLS: Yes, ma'am.

21 MS. HENDERSON: Judge Sherrill.

22 MS. BERGMAN: Okay, the 19th and 20th
23 of September we are clear.

24 MS. HENDERSON: Okay. I'm not sure
25 Mr. Halm will agree to wait that long.

1 MR. HALM: No, ma'am, I will not.

2 MS. HENDERSON: Okay.

3 MR. NICHOLS: Ms. Henderson, is it
4 possible to get back to you so that we can ascertain
5 what Dr. Ferrell's schedule is, or if you can stay on
6 the line and let me to go to another phone, and if I
7 could get him or his staff to let me know what would
8 be available dates?

9 MS. HENDERSON: That's fine. Why
10 don't you check with him to see if we can't start
11 this coming Saturday.

12 MR. NICHOLS: All right. I will do
13 that. If you will just continue to talk there or
14 hold the phone and I'll try to get him on the phone.

15 MS. BERGMAN: We have open on the
16 24th, also. That's a Friday.

17 MS. HENDERSON: Right, we can do 24th
18 and 25th.

19 MR. HALM: I'm available all those
20 dates, Ms. Henderson.

21 MS. HENDERSON: We can do tomorrow,
22 Friday and Saturday. Those three dates are good for
23 Judge Sherrill.

24 MS. BERGMAN: Okay, that way, you
25 know, if on the merits, I think that we probably

1 would need two days and maybe even possibly three
2 from what it looks like prior.

3 MS. HENDERSON: Okay.

4 MS. BERGMAN: Now, if it's a hearing
5 just on this order and just on the visitation, the
6 children, then I think this Friday and Saturday, you
7 know, being very impromptu, very sudden, that would
8 be fine with us. We also have tomorrow.

9 MS. HENDERSON: Okay. Now, this would
10 be in Kerrville.

11 MR. HALM: That would be fine.

12 MS. BERGMAN: Fine.

13 MS. HENDERSON: But if -- Mr. Halm, do
14 you agree with that? Do you agree to those days?

15 MR. HALM: Yes, ma'am. I also would
16 respectfully request that the Judge hear my request
17 about having in camera visitation with the children
18 at that time.

19 MS. HENDERSON: Okay. Whatever you
20 guys want to hear at that time is great, if everybody
21 will just let me know what day you want to start on.

22 MS. BERGMAN: Okay, I think
23 Mr. Nichols has gone in to call Dr. Ferrell ---

24 MS. HENDERSON: Okay.

25 MS. BERGMAN: --- to be available. I

1 know that I was under the impression that Mr. Halm
2 wanted Dr. Ferrell to see some of other people, some
3 witnesses or something like that, to hear statements
4 from those people, from some other witnesses. Am I
5 mistaken about that?

6 MR. HALM: Pam, we still have time to
7 do that if Ferrell will set his schedule to
8 accommodate us.

9 MS. BERGMAN: Right, like maybe
10 tomorrow.

11 MR. HALM: Yes, ma'am.

12 MS. BERGMAN: Okay.

13 MS. HENDERSON: We're waiting on
14 Mr. Nichols; correct?

15 MS. BERGMAN: Right. He has just gone
16 to another phone to call Dr. Ferrell's office to see
17 what his schedule looks like.

18 MS. HENDERSON: No problem.

19 (Remainder of hearing off record.)

20 * * * * *

21 (Hearing concluded at 1:50 o'clock
22 p.m.)

23

24

25

1 STATE OF TEXAS X
 2 COUNTY OF GILLESPIE X

3 I, Cindy E. Snider, Official Court Reporter in
 4 and for the 216th Judicial District Court of
 5 Gillespie County, State of Texas, do hereby certify
 6 that the above and foregoing contains a true and
 7 correct transcription of all portions of evidence and
 8 other proceedings requested by counsel for the
 9 parties in writing to be included in this volume of
 10 the Reporter's Record, in the above-styled
 11 and numbered cause, all of which occurred in open
 12 court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of
 14 the proceedings truly and correctly reflects the
 15 exhibits, if any, offered by the respective parties.

16 I further certify that the total cost for the
 17 preparation of this Reporter's Record is \$ 25.00
 18 and was paid by Mr. John Nichols, Jr.

19 Witness my hand and seal on this, the
 20 29th day of August, 2001.

21 Cindy E. Snider
 22 Cindy E. Snider
 23 Official Court Reporter
 24 P.O. Box 293251
 25 Kerrville, Texas 78029-3251
 (830) 257-5063
 CSR No. 2739
 Expires: 12/31/02

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REPORTER'S RECORD

TRIAL COURT CAUSE NO. 9284

IN THE MATTER OF	X	IN THE DISTRICT COURT
THE MARRIAGE OF	X	
	X	
AVIAN ANN BIEDERMANN	X	
AND	X	
KENNETH KYLE BIEDERMANN	X	216TH JUDICIAL DISTRICT
	X	
	X	
AND IN THE INTEREST OF	X	
KYLA RAE BIEDERMANN,	X	
EMILY LAINE BIEDERMANN,	X	
LOREN NOEL BIEDERMANN,	X	
AND DANA TRUE BIEDERMANN,	X	
MINOR CHILDREN	X	GILLESPIE COUNTY, TEXAS

* * * * *

KEY WORD INDEX

* * * * *

-8-			authority [1] 6:5			7:11					
\$ [1] 17:17			830 [3] 2:13 2:13			available [7] 8:6			coming [2] 8:12		
-0-			17:23			11:5 11:19 11:21			14:11		
00795804 [1] 2:4			-9-			14:8 14:19 15:25			communication [3]		
08804350 [1] 2:11			9284 [2] 1:2 18:2			Avian [3] 1:4 2:9			5:21 5:24 10:12		
-1-			997-6975 [1] 2:13			18:4			compliance [1] 9:24		
11 [1] 12:18			997-9485 [1] 2:13			aware [1] 3:25			computerized [1] 1:23		
11th [2] 12:7 12:16			-A-			-B-			concern [1] 4:13		
12/31/02 [1] 17:24			a.m [1] 10:21			bears [1] 1:23			concerned [5] 3:23		
12th [1] 12:7			able [1] 11:15			Becky [5] 8:5 8:8			6:20 6:23 6:24		
1301 [1] 2:5			Ables [3] 13:2 13:3			8:12 9:8 13:5			7:18		
14996000 [1] 2:3			13:7			behalf [1] 8:15			concluded [2] 4:11		
15th [1] 4:6			above [1] 17:6			Bergman [14] 2:3			16:21		
17 [1] 2:20			above-entitled [1] 1:17			3:10 9:9 12:11			conclusion [1] 6:10		
18 [1] 2:21			above-styled [1] 17:10			13:22 14:15 14:24			conduct [1] 5:2		
19th [2] 13:9 13:22			abuse [5] 5:9 6:25			15:4 15:12 15:22			confer [1] 8:19		
1:33 [1] 1:15			10:13 10:16 10:18			15:25 16:9 16:12			conference [6] 1:12		
1:50 [2] 1:15 16:21			accept [2] 7:10 7:11			16:15			3:1 4:9 5:17		
-2-			accommodate [1] 16:8			best [1] 7:2			5:25 11:3		
2001 [4] 1:15 2:18			act [1] 6:5			better [1] 7:3			conflict [1] 12:11		
3:4 17:20			acted [1] 6:6			Biedermann [20] 1:4			conflicts [2] 12:8		
20th [2] 13:9 13:22			action [1] 5:10			1:5 1:7 1:8			12:9		
216th [5] 1:5 3:4			actual [1] 4:2			1:8 1:9 2:9			connive [1] 5:6		
3:15 17:4 18:5			Ad [2] 6:22 9:14			2:15 3:6 3:6			consideration [1] 11:22		
22 [1] 2:18			admission [2] 7:15			5:19 6:10 6:17			consistently [1] 10:13		
22nd [2] 1:14 3:3			7:16			8:14 18:4 18:5			contact [6] 8:24		
24th [2] 14:16 14:17			admissions [1] 6:22			18:7 18:8 18:8			9:7 9:11 9:12		
257-5063 [1] 17:23			afternoon [1] 4:13			Biedermann's [2] 8:19			9:18 9:19		
25th [1] 14:18			again [1] 11:23			8:21			contains [1] 17:6		
2739 [2] 1:25 17:24			against [4] 4:1			Box [1] 17:22			contempt [1] 7:19		
27th [1] 12:4			4:2 5:6 5:6			Brief [1] 8:11			continue [2] 11:17		
293251 [1] 17:22			age [1] 5:3			-C-			14:13		
-3-			agree [4] 10:19 13:25			camera [1] 15:17			continues [1] 5:2		
3 [1] 2:19			15:14 15:14			cancelled [1] 9:3			conversation [4] 3:20		
340 [1] 2:12			ahead [2] 4:15 13:7			carve [1] 11:19			4:10 4:12 11:17		
3636 [1] 2:6			allegation [1] 10:17			case [4] 4:18 5:14			convince [1] 7:7		
-4-			Allen [2] 2:10 2:11			7:5 12:23			cooperate [1] 6:17		
4 [1] 9:10			along [1] 3:10			certainly [1] 9:25			correct [2] 16:14		
4th [1] 12:6			alternative [1] 4:7			Certificate [1] 2:20			17:7		
-6-			Ann [3] 1:4 2:9			certify [3] 17:5 17:13			correctly [1] 17:14		
654-0706 [1] 2:7			18:4			17:16			cost [1] 17:16		
654-0708 [1] 2:7			APPEARANCES [1] 2:1			chambers [1] 17:12			counsel [2] 5:15		
6:00 [1] 10:20			appointment [1] 9:4			chance [2] 6:16			17:8		
-7-			arose [2] 5:21 5:23			10:10			County [8] 1:9		
713 [2] 2:7 2:7			arrangements [3] 4:4			Charles [2] 1:18			1:19 3:5 3:5		
77010 [1] 2:6			6:11 7:21			3:7			12:5 17:2 17:5		
78029-3251 [1] 17:23			ascertain [3] 11:17			check [2] 13:16 14:10			couple [1] 11:4		
78624 [1] 2:12			11:18 14:4			child [1] 6:4			court [34] 1:2 1:3		
			attempt [1] 9:11			children [6] 1:9			2:20 3:2 3:4		
			attempted [1] 8:22			6:3 6:11 15:6			3:11 3:14 3:14		
			attorney [6] 2:2			6:19 6:11 15:6			3:15 4:20 5:22		
			2:4 2:10 6:22			Cindy [4] 1:24 3:16			6:4 6:8 6:13		
			9:13 9:14			17:3 17:21			6:19 7:12 7:19		
			August [6] 1:14			City [1] 12:24			8:4 8:7 8:12		
			2:18 3:3 4:6			claimed [1] 8:16			9:1 9:5 10:4		
			12:4 17:20			clear [3] 8:20 9:9			10:15 11:1 11:8		
						13:23			12:9 13:10 17:3		
						client [2] 3:24 7:3			17:4 17:12 17:22		
						client's [2] 7:10			18:2 18:3		
									Court's [2] 4:3		
									7:18		
									creating [2] 4:17		

4:24	excuse [1] 8:17		
credibility [1] 7:13	exhibits [1] 17:15		
CSR [2] 1:25 17:24	expect [1] 11:14		
	expected [1] 9:25		
-D-	experiencing [1] 10:8		
D [1] 2:17	expert [1] 5:25		
DANA [2] 1:9	Expires [1] 17:24		
18:9	expressed [1] 4:13		
danger [1] 6:4			
date [2] 8:5 11:9	-F-		
dates [5] 11:11 11:25	fair [1] 7:14		
13:15 14:8 14:20	father [5] 4:17 4:23		
14:22	5:8 9:11 9:18		
days [7] 10:20 11:4	Fax [2] 2:7 2:13		
11:13 11:15 12:15	feels [1] 8:15		
15:1 15:14	felt [1] 4:6		
declarations [1] 4:1	Ferrell [19] 4:4		
deem [1] 5:8	5:25 6:15 7:16		
delay [1] 8:11	8:18 8:20 8:25		
demolished [1] 7:13	9:7 9:15 9:16		
deny [2] 5:22 5:23	9:19 9:20 9:21		
designate [1] 9:16	10:11 11:2 11:19		
designates [1] 9:21	15:23 16:2 16:7		
direct [2] 10:2 10:15	Ferrell's [6] 3:22		
direction [1] 3:18	8:16 8:17 13:16		
District [7] 1:3	14:5 16:16		
1:5 3:4 3:15	Fifth [1] 8:9		
17:4 18:3 18:5	final [1] 4:19		
divorce [1] 3:6	finding [1] 4:5		
done [2] 4:22 7:9	fine [5] 10:7 14:9		
down [1] 10:3	15:8 15:11 15:12		
Dr [23] 3:22 4:4	Florida [1] 6:21		
5:25 7:16 8:16	following [2] 1:16		
8:17 8:18 8:20	3:21		
8:25 9:7 9:15	foregoing [1] 17:6		
9:16 9:19 9:20	forth [4] 3:19 4:14		
9:21 10:11 11:2	5:5 6:24		
11:19 13:16 14:5	Fredericksburg [2] 2:12 12:25		
15:23 16:2 16:16	Friday [5] 4:13		
during [1] 6:21	12:3 14:16 14:22		
duty [1] 4:21	15:6		
	front [2] 3:17 3:19		
-E-	fudging [1] 4:1		
E [4] 1:24 2:17	full [4] 4:18 5:14		
17:3 17:21	7:6 7:14		
early [1] 4:13			
Edwards [1] 12:5	-G-		
eleventh [1] 8:10	gentlemen [2] 3:17		
Emerald [1] 2:12	5:10		
EMILY [2] 1:8	Gillespie [5] 1:9		
18:8	3:5 17:2 17:5		
entirely [1] 8:20	18:9		
event [1] 5:1	girls [5] 4:7 4:17		
everybody [1] 15:20	4:24 7:1 7:22		
evidence [1] 17:7	gone [2] 15:23 16:15		
evidentiary [2] 6:10	good [3] 6:20 11:4		
8:2	14:22		
ex [3] 5:21 5:23	great [1] 15:20		
6:3	grounds [1] 5:20		
examine [1] 8:18	guys [1] 15:20		
except [2] 9:12 9:13			
	-H-		
	Halm [38] 2:10 2:11		
	3:11 3:13 3:24		
	5:17 6:7 6:9		
	6:14 7:2 7:25		
	8:1 8:6 8:9		
	8:22 9:3 9:22		
	9:23 10:6 10:16		
	10:22 11:15 12:8		
	12:13 12:16 12:20		
	12:24 13:3 13:5		
	13:25 14:1 14:19		
	15:11 15:13 15:15		
	16:1 16:6 16:11		
	hand [1] 17:19		
	handle [1] 5:1		
	hard [2] 4:25 9:24		
	havoc [1] 4:17		
	hear [4] 6:17 15:16		
	15:20 16:3		
	heard [4] 1:16 4:18		
	5:14 7:5		
	hearing [9] 5:15		
	7:7 7:14 8:2		
	9:8 11:6 15:4		
	16:19 16:21		
	held [1] 1:19		
	Henderson [31] 10:18		
	10:23 11:9 11:10		
	11:24 12:2 12:15		
	12:17 12:22 13:1		
	13:4 13:6 13:11		
	13:12 13:13 13:18		
	13:21 13:24 14:2		
	14:3 14:9 14:17		
	14:20 14:21 15:3		
	15:9 15:13 15:19		
	15:24 16:13 16:18		
	hereby [1] 17:5		
	hiding [1] 5:4		
	high-priced [1] 7:22		
	hold [1] 14:14		
	Honor [8] 3:13 5:17		
	6:7 8:1 9:25		
	10:7 10:22 10:24		
	Honorable [2] 1:18		
	3:16		
	Houston [1] 2:6		
	-I-		
	idea [1] 11:4		
	ill [1] 3:25		
	immediately [4] 8:3		
	10:1 10:3 11:5		
	impression [1] 16:1		
	impromptu [1] 15:7		
	inaccuracies [1] 8:16		
	included [1] 17:9		
	Index [2] 2:21 18:12		
	information [3] 6:14		
	6:18 7:8		
	initiated [1] 3:18		
	-J-		
	inquired [1] 10:14		
	instilled [1] 5:12		
	intent [1] 4:2		
	interest [3] 1:7		
	4:1 18:7		
	interpretation [1] 10:12		
	-K-		
	J [2] 2:10 2:11		
	Jack [2] 6:15 9:15		
	Jody [2] 2:10 2:11		
	John [3] 2:2 2:5		
	13:14		
	Judge [15] 1:18		
	3:9 8:13 11:10		
	11:20 11:23 12:4		
	12:13 12:18 12:23		
	13:1 13:6 13:21		
	14:23 15:16		
	Judge's [1] 9:10		
	Judicial [5] 1:5		
	3:4 3:15 17:4		
	18:5		
	jury [3] 12:5 12:21		
	13:7		
	justice [1] 10:9		
	-L-		
	lady [1] 3:17		
	LAINÉ [2] 1:8		
	18:8		
	last [3] 3:18 4:5		
	6:23		
	Law [5] 2:2 2:4		
	2:5 2:10 2:11		
	least [2] 11:6 11:15		
	left [1] 11:11		
	letting [1] 11:8		
	line [1] 14:6		
	listen [2] 7:12 7:20		

Litem [2] 6:22 9:14	15:19 15:22 15:24	Pamela [2] 2:3	refused [1] 6:16
looks [2] 15:2 16:17	15:25 16:9 16:12	3:10	relax [1] 5:11
Loop [1] 2:12	16:13 16:15 16:18	parte [3] 5:21 5:24	Remainder [1] 16:19
LOREN [2] 1:8		6:4	report [3] 3:22 8:16
18:8	-N-	parties [2] 17:9	8:17
love [1] 10:7	N [1] 2:17	17:15	reported [2] 1:23
	need [3] 11:12 12:3	party [3] 9:15 9:21	17:12
-M-	15:1	11:3	reporter [4] 3:2 3:15 17:3 17:22
ma'am [5] 12:1	never [2] 10:10 10:14	past [1] 6:12	Reporter's [6] 1:1 2:20 17:10 17:13
13:20 14:1 15:15	Nichols [19] 2:2	people [5] 5:5 5:6 8:18 16:2 16:4	17:17 18:1
16:11	2:5 3:8 3:9	perceives [1] 4:20	request [6] 5:18 8:14
machine [1] 1:23	4:8 8:13 8:22	personal [1] 6:1	15:16 15:16
Madam [1] 3:2	10:24 11:2 11:14	Petitioner [1] 2:9	requested [1] 17:8
Mahan [1] 12:24	12:1 13:12 13:14	phone [5] 11:18 14:6 14:14 14:14 16:16	rescind [2] 5:18 6:25
manner [2] 5:2	13:14 13:20 14:3	point [2] 7:11 7:25	resolved [1] 10:8
9:12	14:12 15:23 16:14	portions [1] 17:7	respect [1] 10:1
MARRIAGE [2] 1:3	night [4] 4:6 5:20	position [2] 8:20	respectfully [5] 5:18 8:1 15:16
18:3	6:23 6:24	10:11	5:22 5:23
married [1] 5:3	nights [1] 10:20	possible [3] 9:23	15:16
matter [7] 1:3	NOEL [2] 1:8 18:8	11:7 14:4	respective [1] 17:15
3:6 3:7 8:3	nothing [1] 4:11	possibly [3] 3:24	Respondent [1] 2:15
10:19 11:6 18:3	now [7] 5:10 5:15 7:10 9:17 13:18	5:6 15:1	responsibility [1] 4:21
matters [3] 7:3	15:4 15:9	power [1] 6:5	responsible [1] 5:6
10:13 10:16	number [3] 9:13	preferential [1] 12:18	result [1] 5:24
may [4] 5:15 6:3	9:14 9:15	preferentially [1] 12:12	right [10] 3:2 3:11 3:17 3:19 8:4 11:8 14:12 14:17 16:9 16:15
6:5 7:25	numbered [2] 1:17	preparation [1] 17:17	16:9 16:15
McKinney [1] 2:5	17:11	present [1] 11:23	room [1] 11:11
meet [1] 10:20	-O-	Presiding [1] 1:18	Rudkin [3] 3:20
mental [3] 5:9	o'clock [3] 1:15	primary [1] 6:24	4:12 7:15
6:25 10:18	1:15 16:21	problem [1] 16:18	
merits [1] 14:25	obligation [1] 4:21	proceed [1] 4:15	
mesh [1] 13:17	obviously [1] 10:25	proceedings [5] 1:16 1:23 2:19 17:8	
midnight [1] 10:21	occurred [1] 17:11	17:14	
might [1] 11:3	off [1] 16:19	produce [2] 8:17	
MINOR [2] 1:9	offered [1] 17:15	11:16	
18:9	office [2] 13:16 16:16	protect [2] 4:7	
minute [3] 6:19	Offices [2] 2:5	7:1	
8:7 11:1	official [4] 3:14 6:5 17:3 17:22	protection [1] 6:3	
misinformation [1] 10:9	one [7] 3:17 4:23 5:11 6:19 9:13	psychiatrist [1] 7:23	
misread [1] 9:22	11:12 12:6	psychological [1] 7:23	
missed [1] 5:20	open [2] 14:15 17:11		
mistake [1] 9:7	order [10] 3:18 5:19 5:21 7:1 7:18 8:23 9:10 9:25	-Q-	
mistaken [1] 16:5	10:1 15:5	questions [1] 5:16	
modify [1] 7:21	orders [3] 4:3 4:19 5:13		
Monday [1] 8:24	otherwise [1] 8:19	-R-	
month [2] 6:12 7:17	own [2] 5:10 5:25	RAE [2] 1:7 18:7	
mornings [1] 10:20		raised [1] 1:23	
mother [3] 5:7		reactions [1] 5:4	
9:12 9:19		rebut [1] 8:15	
Ms [44] 2:3 10:18 10:23 11:9 11:10 11:24 12:2 12:11 12:15 12:17 12:22 13:1 13:4 13:6 13:11 13:12 13:13 13:18 13:21 13:22 13:24 14:2 14:3 14:9 14:15 14:17 14:20 14:21 14:24 15:3 15:4 15:9 15:12 15:13		received [2] 6:15 8:23	
	-P-	recommend [1] 8:14	
	p.m [3] 1:15 1:15 16:22	record [7] 1:1 6:9 16:19 17:10 17:13 17:17 18:1	
	P.O [1] 17:22	reflect [1] 3:3	
	Page [1] 2:18	reflects [1] 17:14	
	paid [1] 17:18		
	Pam [1] 16:6		
			-S-
			Saturday [8] 10:5 11:21 12:3 13:10 13:19 14:11 14:22 15:6
			Saturdays [1] 10:21
			says [2] 9:17 9:19
			SBOT [3] 2:3 2:4 2:11
			schedule [3] 14:5 16:7 16:17
			seal [2] 1:23 17:19
			second [1] 4:5
			see [9] 4:16 7:20 8:5 11:4 11:5 13:16 14:10 16:2
			Senior [1] 1:18
			September [6] 12:6 12:7 12:16 12:18 13:9 13:23
			set [8] 8:2 10:1 10:19 11:9 12:12 12:18 13:8 16:7
			sexual [2] 10:13 10:16
			sexually [1] 5:1

shall [4] 9:11 9:16	together [1] 13:17	words [1] 5:8
9:18 9:19	tomorrow [5] 11:12	writing [3] 9:16
Sherrill [9] 1:18	12:3 14:21 15:8	9:21 17:9
3:7 11:23 12:4	16:10	
12:14 12:19 12:23	too [1] 7:24	-X-
13:21 14:23	total [1] 17:16	X [32] 1:3 1:3
sick [1] 3:25	transcription [1] 17:7	1:4 1:4 1:5
situation [3] 4:16	travesty [1] 10:9	1:5 1:6 1:6
4:24 5:15	treatment [1] 7:23	1:7 1:7 1:8
situations [1] 5:12	trial [5] 1:2 10:2	1:8 1:9 1:9
sixth [1] 8:9	12:5 12:12 18:2	2:17 17:1 17:1
sleeping [3] 4:3	trials [1] 13:7	17:2 18:3 18:3
6:11 7:16	tried [1] 4:18	18:4 18:4 18:5
Snider [4] 1:24 3:16	trip [1] 6:21	18:5 18:6 18:6
17:3 17:21	true [3] 1:9 17:6	18:7 18:7 18:8
soon [1] 11:6	18:9	18:8 18:9 18:9
spirit [1] 4:2	truly [1] 17:14	
spouse [1] 5:7	try [2] 11:18 14:14	
SR [1] 2:2	trying [2] 7:1 9:24	
staff [1] 14:7	Tuesday [2] 5:20	
stale [1] 6:15	8:23	
start [4] 10:5 11:11	two [5] 9:14 11:12	
14:10 15:21	11:15 13:7 15:1	
state [4] 3:16 3:19	-U-	
17:1 17:5	under [3] 9:10 9:24	
statement [1] 9:6	16:1	
statements [2] 6:17	understand [2] 10:17	
16:3	13:19	
states [1] 9:11	unless [1] 9:20	
stay [1] 14:5	up [4] 3:17 3:19	
stenotype [1] 1:23	5:3 9:10	
still [1] 16:6	update [1] 6:16	
straight [1] 7:4	-V-	
subject [2] 12:20	valid [1] 1:23	
13:8	versus [2] 3:6 12:24	
substantially [1] 7:19	viewpoint [1] 8:21	
such [1] 9:15	violated [1] 7:18	
sudden [1] 15:7	violation [1] 4:3	
suggesting [1] 7:2	visitation [4] 4:14	
Suite [1] 2:6	5:19 15:5 15:17	
-T-	volume [1] 17:9	
tape [1] 4:5	-W-	
taught [1] 5:5	wait [1] 13:25	
teenagers [1] 4:25	waiting [1] 16:13	
telephone [1] 3:1	Wednesday [2] 1:14	
TELEPHONIC [1]	4:6	
1:12	week [1] 12:4	
temporary [3] 5:13 5:13 11:6	weekend [2] 4:12	
tenth [1] 8:9	4:14	
Texas [8] 1:9 1:19	willing [5] 7:12	
2:6 2:12 17:1	7:13 7:19 10:5	
17:5 17:23 18:9	10:20	
thank [4] 10:22 11:9	Witness [1] 17:19	
12:1 13:5	witnesses [4] 10:2	
thought [1] 4:9	11:16 16:3 16:4	
three [3] 9:15 14:22	word [4] 2:21 7:10	
15:1	7:11 18:12	
through [2] 9:13		
9:20		

I N V O I C E

Date: 8-17-01
Invoice No. 251

Paula M. Beaver
Certified Shorthand Reporter
P.O. Box 934
Comfort, Texas 78013
(830)537-4724
SS# 455-61-4238

Bill Gillespie County
To: Ms. Barbara Meyer, District Clerk
204 Courthouse
101 W. Main Street
Fredericksburg, Texas 78624-3700

Description	Amount
Re: Court Reporting Services 216th Judicial District Court of Gillespie County, Texas, sitting in Kendall County.	
Aug. 15&16 2001: (Hon. Charles Sherrill presiding)	
Cause No. 9284	
Two Full Days @ \$200/day	\$400.00

THANK YOU!

TOTAL: \$400.00
BALANCE DUE: \$400.00

*Copy To Auditor
8-10-4-01*

FILED
At 10:430'clock A.M

AUG 23 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By: [Signature]
Deputy

W
COPY
3/10/01

POLLARD & MONROE
ATTORNEYS AT LAW

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L. W. POLLARD (1902-1981)
THOMAS W. POLLARD
SCOTT F. MONROE

August 27, 2001

Ms. Barbara Meyer
District Clerk
Gillespie County Courthouse, Ste. 204
101 W. Main Street
Fredericksburg, Texas 78624-3700

RE: Cause No. 9284; In the Matter of the
Marriage of Avian Ann Biedermann and
Kennerth Kyle Biedermann and In the
Interest of Kyla Rae Biedermann, Emily
Laine Biedermann, Loren Noel
Biedermann and Dana True Biedermann,
Minor Children, In the District Court,
Gillespie County, Texas, 216th Judicial
District

Dear Ms. Meyer:

Enclosed herewith please find an Original and one (1) copy of Motion for Substitution
of Counsel and Order Approving Substitution of Counsel in connection with the above
entitled and numbered cause.

Will you please file the Petition and return a file marked copy in the self addressed,
stamped envelope. ✓ 8-30-01 m.m.

Thank you for your attention to this matter.

Yours very truly,

Stephanie C. Parker

Stephanie C. Parker, Assistant to Scott

FILED

At 11:08 O'clock A.M.

AUG 29 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Barbara Meyer
Deputy

enc:

GILLESPIE COUNTY, TEXAS
DISTRICT CLERK
COURT HOUSE

Ms. Pamela K. Bergmann
Kurt Rudkin

0:00:00
FILED

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT

OF GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

MOTION FOR SUBSTITUTION OF COUNSEL

COMES NOW, KENNETH KYLE BIEDERMANN, Respondent in the above entitled and numbered cause, and files this, his Motion For Substitution of Counsel and for good cause would respectfully show the Court the following:

I.

Respondent respectfully request that Scott F. Monroe, of the lawfirm of Pollard & Monroe, 951 Main Street, Kerrville, Texas, be substituted in as the attorney of record for Respondent in place of Allen J. Halm.

WHEREFORE PREMISES CONSIDERED, Respondent respectfully prays that Scott

FILED
At 11:09 O'clock A.M.

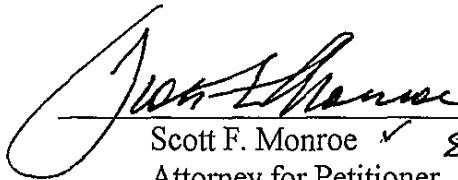
AUG 29 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

[Handwritten signature]
Deputy


F. Monroe be substituted as the Attorney of Record for Respondent in the above referenced matter.

Respectfully submitted,



Scott F. Monroe ✓ 8-30-01 m.m.
Attorney for Petitioner
State Bar No.: 14272700
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (Fax)

APPROVED AND CONSENTED TO:



ALLEN J. HALM ✓ 8-30-01 m.m.
Attorney at Law
State Bar No.: 08804350
307 W. Main, Suite 101
Fredericksburg, Texas 78624
(830) 997-6975
(830) 997-9485 (Fax)

CERTIFICATE OF SERVICE

I certify that I have this the 27th day of August, 2001, served a copy of the foregoing, Respondent's Original Answer, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No.'s 7061 0320 0001 8970 0172, and 7061 0320 0001 8970 0165 compliance with Rule 21 and Rule 21a of the Texas Rules of Civil Procedure as follows:

Ms. Pamela K. Bergman
Attorney at Law
State Bar No.: 00795804
1301 McKinney, Suite 3636
Houston, Texas 77010
(713) 654-0708
(713) 654-0706 (Fax)

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006


SCOTT F. MONROE

CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS
RECEIVED

AUG 27 2001

VI 0:00 PM
RECEIVED

POLLARD & MONROE
ATTORNEYS AT LAW

951 MAIN STREET
KERRVILLE, TEXAS 78028

TELEPHONE: (830) 896-7500
TELECOPIER: (830) 257-7079
E-MAIL: tpollard@ktc.com
E-MAIL: smonroe@ktc.com

L. W. POLLARD (1902-1981)
THOMAS W. POLLARD
SCOTT F. MONROE

August 31, 2001

Ms. Barbara Meyer
District Clerk
Gillespie County Courthouse, Ste. 204
101 W. Main Street
Fredericksburg, Texas 78624-3700

RE: Cause No. 9284; In the Matter of the
Marriage of Avian Ann Biedermann and
Kenneth Kyle Biedermann and In the
Interest of Kyla Rae Biedermann, Emily
Laine Biedermann, Loren Noel
Biedermann and Dana True Biedermann,
Minor Children; In the District Court of
Gillespie County, Texas, 216th Judicial
District

Dear Ms. Meyer:

Enclosed herewith please find and Original and one (1) copy of Motion to Vacate
Emergency Sui Sponte Order in connection with the above entitled and numbered cause.

Will you please file the Motion and return a file marked copy to our office in the self
addressed, stamped envelope.

FILED
At 12:05 O'clock P.M

SEP 04 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Signature]
Deputy

Page 2
Meyer letter
August 31, 2001

Thank you very much for your assistance in this matter.

Yours very truly,



Stephanie C. Parker, Assistant to Scott F. Monroe

enc.
:scp

cc:

Ms. Pamela K. Bergman, CMRRR # 7001 0320 0001 8970 0141
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin, CMRRR # 7001 0320 0001 8970 0158
Attorney at Law
1414 E. Blanco Road
Boerne, Texas 78006

STEPHANIE C. PARKER
ASSISTANT TO SCOTT F. MONROE
COURT REPORTER

SEE PAGE 1

0.0000
0.0000

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

* IN THE DISTRICT COURT
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* OF GILLESPIE COUNTY, TEXAS
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*
* 216TH JUDICIAL DISTRICT

MOTION TO VACATE EMERGENCY SUI SPONTE ORDER

COMES NOW, Kenneth Kyle Biedermann, Respondent in the above styled and numbered cause and files this, his Motion to Vacate Emergency Sui Sponte Order, and for good cause would respectfully show the Court the following:

I.

Respondent would show the Court that the Emergency Sui Sponte Order signed by the Honorable Charles Sherrill on August 20, 2001, a copy of which is attached hereto as Exhibit A, is void and should therefore be set aside, for the following reasons:

1. Said Emergency Sui Sponte Order violates Rule 680 of the Texas Rules of Civil Procedure because said Emergency Order, which has the effect of a Temporary Restraining Order, does not provide for a hearing on such Restraining Order as required by law.

FILED
At 12:00 O'clock P.M.

SEP 04 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer
Deputy

2. Said Emergency Sui Sponte Order violates Section 105.001 (c) (3) 1 of the Texas Family Code because said Order has the effect of prohibiting Respondent of having any type of communication or access to his children and such a prohibition is not based on verified pleadings or affidavit as required by The Texas Family Code.
3. It appears on the face of the Emergency Sui Sponte Order that said Order was based on information received by the Judge in an ex parte communication.


II.

Respondent would further show the Court that the Emergency Sui Sponte Order is voidable for the reason that it is unconstitutionally vague and unclear as to exactly what the Respondent was supposed to have done in order to warrant the issue of such Order, nor is the Order sufficiently clear so as to advise Respondent as to what he must do in order to have said Order vacated. Said Order also threatens Respondent with termination of his parental rights and the assessment of other penalties, for which there are no pleadings, requests or suggestions that the assessments should occur.

WHEREFORE PREMISES CONSIDERED, Respondent respectfully prays that the Court will set aside the Emergency Sui Sponte Order and restore Respondent to visitation with his children as previously agreed upon by the parties and as previously ORDERED by the Court.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (FAX)

BY: 
SCOTT F. MONROE ✓ 9-4-01
State Bar No. 14272700 m.m.
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I have this the 31st day of August, 2001, served a copy of the foregoing, Motion to Vacate Emergency Sui Sponte Order, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No. 7001 0320 0001 8970 0158 and 7001 0320 0001 8970 0141 compliance with Rule 21 and Rule 21a of the Texas Rules of Civil Procedure as follows:

Ms. Pamela K. Bergman
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006

CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS


SCOTT F. MONROE

0:0100K
ATED

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

* IN THE DISTRICT COURT
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* OF GILLESPIE COUNTY, TEXAS
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* 216TH JUDICIAL DISTRICT

KENNETH KYLE BIEDERMANN'S RESPONSE TO EMERGENCY SUI
SPONTE ORDER (Subject to Motion to Vacate Emergency Sui Sponte Order)

TO SAID HONORABLE COURT:

COMES NOW, Kenneth Kyle Biedermann, Respondent in the above styled and numbered cause, and files this, his Response to Emergency Sui Sponte Order (subject to Motion to Vacate Emergency Sui Sponte Order), and for good cause would respectfully show the Court the following:

I.

Respondent, Kenneth Kyle Biedermann, is unable to respond to the Emergency Sui Sponte Order signed by the Court on August 20, 2001, with any degree of specificity. Said Emergency Order was apparently based upon information received by the Judge in an Ex Parte communication with Dr. Jack Ferrell. It is unknown whether or not opposing counsel

FILED

At 4:11 O'clock P.M.

SEP 5 2001

1

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By *Christa Biedermann*

participated in this conversation. Furthermore, Respondent does not know what was said during such conversation or by whom things were said. Certainly, Respondent does not know any specific allegations raised against him during such conversation and therefore cannot accurately respond to said Order.

II.

Subject to the above paragraph, Respondent would state to the Court that he loves his children very, very much. Respondent has not intentionally disobeyed any Court Orders and has tried, within the best of his ability, to comply with orders of the Court. If Respondent has somehow violated some verbal order of the Court, then Respondent has done so and unintentionally. Because Respondent is unaware of what he is accused of doing, Respondent cannot specifically reply to the questions required by the Court in the Emergency Sui Sponte Order to be addressed. For example, Respondent is not in a position to reply to the Court whether or not “the information furnished to the Court is untrue and/or not accurate” as Respondent does not know what information was furnished to the Court. Because Respondent does not know what he is being accused of doing, Respondent cannot comment about the striking of his pleadings or the assessment of attorney’s fees, costs of court or contempt be addressed. Respondent would generally state that he has attempted to comply with Court Orders to the best of his ability, and has certainly complied with the Court Orders as faithfully as the Petitioner has complied with such the Court Orders. Respondent would be happy to supplement this response, once Respondent is advised of the nature and content of the information given to the Judge, from whatever source, which prompted the entry of

the Emergency Sui Sponte Order.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (FAX)

BY: *Scott F. Monroe*
SCOTT F. MONROE
State Bar No. 14272700
Attorney for Respondent

I have read the foregoing Response To Emergency Sui Sponte Order (Subject to Motion to Vacate Emergency Sui Sponte Order) and the statement contained therein are true and correct.

Kenneth Kyle Biedermann
KENNETH KYLE BIEDERMANN

STATE OF TEXAS }
COUNTY OF ~~GILLESPIE~~ *KERR* }

This instrument was acknowledged before me, a Notary Public, on this the 5th day of September, 2001 by Kenneth Kyle Biedermann.



Kristi Hobson
Notary Public, State of Texas

CERTIFICATE OF SERVICE

I certify that I have this the 5th day of September, 2001, served a copy of the foregoing, Motion to Vacate Emergency Sui Sponte Order, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No.'s 7001 0320 000/ 8970 0127 and 7061 0320 000/ 8970 0110 compliance with Rule 21 and Rule 21a of the Texas Rules fo Civil Procedure as follows:

Ms. Pamela K. Bergman
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006



SCOTT F. MONROE

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

* IN THE DISTRICT COURT
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* OF GILLESPIE COUNTY, TEXAS
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*
* 216TH JUDICIAL DISTRICT

MOTION TO VACATE EMERGENCY SUI SPONTE ORDER

COMES NOW, Kenneth Kyle Biedermann, Respondent in the above styled and numbered cause and files this, his Motion to Vacate Emergency Sui Sponte Order, and for good cause would respectfully show the Court the following:

I.

Respondent would show the Court that the Emergency Sui Sponte Order signed by the Honorable Charles Sherrill on August 20, 2001, a copy of which is attached hereto as Exhibit A, is void and should therefore be set aside, for the following reasons:

1. Said Emergency Sui Sponte Order violates Rule 680 of the Texas Rules of Civil Procedure because said Emergency Order, which has the effect of a Temporary Restraining Order, does not provide for a hearing on such Restraining Order as required by law.

FILED
At 12:06 O'clock P.M.

SEP 04 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer
Deputy

2. Said Emergency Sui Sponte Order violates Section 105.001 (c) (3) 1 of the Texas Family Code because said Order has the effect of prohibiting Respondent of having any type of communication or access to his children and such a prohibition is not based on verified pleadings or affidavit as required by The Texas Family Code.
3. It appears on the face of the Emergency Sui Sponte Order that said Order was based on information received by the Judge in an ex parte communication.


II.

Respondent would further show the Court that the Emergency Sui Sponte Order is voidable for the reason that it is unconstitutionally vague and unclear as to exactly what the Respondent was supposed to have done in order to warrant the issue of such Order, nor is the Order sufficiently clear so as to advise Respondent as to what he must do in order to have said Order vacated. Said Order also threatens Respondent with termination of his parental rights and the assessment of other penalties, for which there are no pleadings, requests or suggestions that the assessments should occur.

WHEREFORE PREMISES CONSIDERED, Respondent respectfully prays that the Court will set aside the Emergency Sui Sponte Order and restore Respondent to visitation with his children as previously agreed upon by the parties and as previously ORDERED by the Court.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (FAX)

BY: 
SCOTT F. MONROE ✓ 9-4-01
State Bar No. 14272700 m.m.
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I have this the 31st day of August, 2001, served a copy of the foregoing, Motion to Vacate Emergency Sui Sponte Order, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No. 7001 0320 0001 8970 0158 and 7001 0320 0001 8970 0141 compliance with Rule 21 and Rule 21a of the Texas Rules fo Civil Procedure as follows:

Ms. Pamela K. Bergman
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006

CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS


SCOTT F. MONROE

VI O. CLUCK III
AUG 31 2001

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

* IN THE DISTRICT COURT
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* OF GILLESPIE COUNTY, TEXAS
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* 216TH JUDICIAL DISTRICT

KENNETH KYLE BIEDERMANN'S RESPONSE TO EMERGENCY SUI
SPONTE ORDER (Subject to Motion to Vacate Emergency Sui Sponte Order)

TO SAID HONORABLE COURT:

COMES NOW, Kenneth Kyle Biedermann, Respondent in the above styled and numbered cause, and files this, his Response to Emergency Sui Sponte Order (subject to Motion to Vacate Emergency Sui Sponte Order), and for good cause would respectfully show the Court the following:

I.

Respondent, Kenneth Kyle Biedermann, is unable to respond to the Emergency Sui Sponte Order signed by the Court on August 20, 2001, with any degree of specificity. Said Emergency Order was apparently based upon information received by the Judge in an Ex Parte communication with Dr. Jack Ferrell. It is unknown whether or not opposing counsel

FILED

At 4:11 O'clock P.M.

SEP 5 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By *Christ Depetta*

participated in this conversation. Furthermore, Respondent does not know what was said during such conversation or by whom things were said. Certainly, Respondent does not know any specific allegations raised against him during such conversation and therefore cannot accurately respond to said Order.

II.

Subject to the above paragraph, Respondent would state to the Court that he loves his children very, very much. Respondent has not intentionally disobeyed any Court Orders and has tried, within the best of his ability, to comply with orders of the Court. If Respondent has somehow violated some verbal order of the Court, then Respondent has done so and unintentionally. Because Respondent is unaware of what he is accused of doing, Respondent cannot specifically reply to the questions required by the Court in the Emergency Sui Sponte Order to be addressed. For example, Respondent is not in a position to reply to the Court whether or not “the information furnished to the Court is untrue and/or not accurate” as Respondent does not know what information was furnished to the Court. Because Respondent does not know what he is being accused of doing, Respondent cannot comment about the striking of his pleadings or the assessment of attorney’s fees, costs of court or contempt be addressed. Respondent would generally state that he has attempted to comply with Court Orders to the best of his ability, and has certainly complied with the Court Orders as faithfully as the Petitioner has complied with such the Court Orders. Respondent would be happy to supplement this response, once Respondent is advised of the nature and content of the information given to the Judge, from whatever source, which prompted the entry of

the Emergency Sui Sponte Order.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (FAX)

BY: *Scott F. Monroe*
SCOTT F. MONROE
State Bar No. 14272700
Attorney for Respondent

I have read the foregoing Response To Emergency Sui Sponte Order (Subject to Motion to Vacate Emergency Sui Sponte Order) and the statement contained therein are true and correct.

Kenneth Kyle Biedermann
KENNETH KYLE BIEDERMANN

STATE OF TEXAS }

COUNTY OF ~~GILLESPIE~~ *KERR* }

This instrument was acknowledged before me, a Notary Public, on this the 5th day of September, 2001 by Kenneth Kyle Biedermann.



Kristi Hobson
Notary Public, State of Texas

CERTIFICATE OF SERVICE

I certify that I have this the 5th day of September, 2001, served a copy of the foregoing, Motion to Vacate Emergency Sui Sponte Order, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No.'s 7001 0320 000/ 8970 0127 and 7001 0320 000/ 8970 0110 compliance with Rule 21 and Rule 21a of the Texas Rules fo Civil Procedure as follows:

Ms. Pamela K. Bergman
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006


SCOTT F. MONROE

POLLARD & MONROE

ATTORNEYS AT LAW

951 MAIN STREET
KERRVILLE, TEXAS 78028

TELEPHONE: (830) 896-7500

TELECOPIER: (830) 257-7079

E-MAIL: tpollard@ktc.com

E-MAIL: smonroe@ktc.com

L. W. POLLARD (1902-1981)

THOMAS W. POLLARD

SCOTT F. MONROE

August 31, 2001

Ms. Barbara Meyer
District Clerk
Gillespie County Courthouse, Ste. 204
101 W. Main Street
Fredericksburg, Texas 78624-3700

RE: Cause No. 9284; In the Matter of the
Marriage of Avian Ann Biedermann and
Kenneth Kyle Biedermann and In the
Interest of Kyla Rae Biedermann, Emily
Laine Biedermann, Loren Noel
Biedermann and Dana True Biedermann,
Minor Children; In the District Court of
Gillespie County, Texas, 216th Judicial
District

Dear Ms. Meyer:

Enclosed herewith please find and Original and one (1) copy of Motion to Vacate
Emergency Sui Sponte Order in connection with the above entitled and numbered cause.

Will you please file the Motion and return a file marked copy to our office in the self
addressed, stamped envelope.

FILED
At 12:05 O'clock P.M.

SEP 04 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Signature]
Deputy

Page 2
Meyer letter
August 31, 2001

Thank you very much for your assistance in this matter.

Yours very truly,



Stephanie C. Parker, Assistant to Scott F. Monroe

enc.
:scp

cc:
Ms. Pamela K. Bergman, CMRRR # 7001 0320 0001 8970 0141
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin, CMRRR # 7001 0320 0001 8970 0158
Attorney at Law
1414 E. Blanco Road
Boerne, Texas 78006

CHIEF OF POLICE
DISTRICT OF COLUMBIA
OVERSIGHT OFFICE

2001-08-31

VI O. CROOK
2001-08-31

FILED
At 11:37 O'clock AM

No. 9284

SEP 10 2001

**IN THE MATTER OF
THE MARRIAGE OF**

**AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN**

AND IN THE INTEREST OF

**KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN**

* **IN THE DISTRICT COURT**
*
* **SARBARA MEYER**
* **DISTRICT CLERK**
* **GILLESPIE COUNTY, TEXAS**
* *Barbara Meyer*
*
* **OF GILLESPIE COUNTY, TEXAS**
*
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*
* **216TH JUDICIAL DISTRICT**

MOTION FOR FURTHER TEMPORARY ORDERS

TO SAID HONORABLE COURT:

COMES NOW, Kenneth Kyle Biedermann, Respondent in the above styled and numbered cause and files this, his Motion for Further Temporary Orders, and for good cause would respectfully show the Court the following:

I.

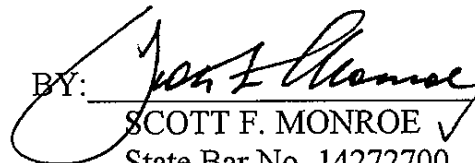
Up until August 20, 2001, the Respondent was finally allowed access to his children under the basic terms and conditions of a Standard Possession Order, with a couple of exceptions. However, on August 20, 2001, the Judge of the Court entered an Emergency Sui Sponte Order which denied the Respondent any access to his children whatsoever and prohibited the Respondent from communicating with his children in any form or fashion.

At the present time, there is no trial setting in this cause. Furthermore, said Emergency Sui Sponte Order does not contain a haring date for the Emergency Orders to be addresses. Therefore, the effect of the Emergency Sui Sponte Order is to totally deny Respondent any access to his children indefinitely. Respondent would respectfully pray that this Court conduct a hearing on further Temporary Orders and outline the terms and conditions, rules or other parameters that the Respondent must abide by in order to have access to his children while this case is pending.

WHEREFORE PREMISES CONSIDERED, Respondent respectfully prays that the Court will set this matter for hearing and will grant Respondent possession of and access to his children.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (FAX)

BY: 
SCOTT F. MONROE ✓ Copy 9-12
State Bar No. 14272700
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I have this the 7th day of September, 2001, served a copy of the foregoing, Respondent's Motion for Further Temporary Orders, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No.'s 7001 0350 0001 8968 044 and 7001 0350 0001 8968 2386 compliance with Rule 21 and Rule 21a of the Texas Rules of Civil Procedure as follows:

Ms. Pamela K. Bergman
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006


SCOTT F. MONROE

CITIZENS COMMUNITY BANK
DIGITAL CENTER
EVERETT WASH

11 0.0100K 04
LIMITED

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

* IN THE DISTRICT COURT
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* OF GILLESPIE COUNTY, TEXAS
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* 216TH JUDICIAL DISTRICT

MOTION TO COMPEL PRODUCTION OF DISCOVERABLE MATERIAL

TO SAID HONORABLE COURT:

COMES NOW, Kenneth Kyle Biedermann, Respondent in the above styled and numbered cause, and files this his Motion to Compel Production of Discoverable Material, and for good cause would respectfully show the Court the following:

I.

In the initial Request for Production propounded by the Respondent to Petitioner, Respondent requested the following discoverable evidence:

1. Any and all recordings of Avian Ann Biedermann's husband's voice or image in any form or format that she has in her possession and control or has relinquished to her attorney.

FILED
At 11:38 O'clock A.M

SEP 10 2001
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

II.

In response to this Request for Production, the Petitioner has produced two (2) different tapes, one of which was a recording of the Respondent talking with his children prior to a vacation trip to Florida and the second tape was blank. Later on, a transcription of a separate recording was provided to the parties in open court. However, while in open Court, the attorney's for the Petitioner displayed a plastic ziploc bag containing dozens of micro-cassette tapes and the implication was made that all of these tapes were recordings of conversations between either the Respondent and the Petitioner or between Respondent and his children. If there are, in fact, more tape recordings, still, the supplemental discovery responses filed by the Petitioner suggest that all tapes have been produced. None of these tapes have been produced; to Respondent's knowledge, none of these tapes have been transcribed, and Respondent is unable to adequately prepare for trial without this information. Respondent would respectfully request that the Petitioner be ordered to be Compelled to produce both the tapes and transcriptions of all of the tapes to Respondent at least thirty (30) days prior to trial.

III.

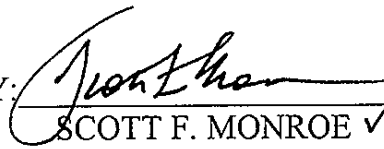
It has been necessary for Respondent to employ the law offices of Pollard & Monroe to protect his interest in this matter. Petitioner should be required to pay any and all of Respondent's reasonable attorney's fees, cost and expenses as a result of having had to file this Motion and conduct a hearing thereon.

WHEREFORE PREMISES CONSIDERED, Respondent respectfully prays that the

Court will grant the relief requested in this Motion and compel the production of the materials requested above.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
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BY: 
SCOTT F. MONROE ✓ 9-11-01
State Bar No. 14272700 m.m.
Attorney for Respondent


CERTIFICATE OF SERVICE

I certify that I have this the 7th day of September, 2001, served a copy of the foregoing, Motion to Compel Production of Discoverable Material, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No.'s 7001 0320 0001 8968 2401 and 7001 0320 0001 8968 2386 compliance with Rule 21 and Rule 21a of the Texas Rules of Civil Procedure as follows:

Ms. Pamela K. Bergman
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Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
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Boerne, Texas 78006

CLERK OF DISTRICT COURT
SARASOTA COUNTY, FLORIDA


SCOTT F. MONROE

0.0100K
LITED

Paula Richards Loetz

Invoice

Certified Shorthand Reporter
Vendor ID No. 452-11-4061
P.O. Box 290092
Kerrville, Texas 78029-0092

Date	Invoice #
7/11/2001	2001107

Bill To
Gillespie County Ms. Barbara Meyer 204 Courthouse 101 W. Main Street Fredericksburg, Texas 78624-3700

Description	Amount
<p>Re: Court Reporting Services, 216th Judicial District Court of Gillespie County, Texas</p> <p>Thursday, July 5, 2001 - Hon. Charles Sherrill, Presiding, sitting in Gillespie County No. 9284 - Marriage of Biedermann One Full Day</p> <p>Tuesday, July 10, 2001 - Hon. Charles Sherrill, Presiding, sitting in Gillespie County No. 9421 - Keller v. Keller - No Record, Appearance Only</p>	<p>200.00</p> <p>50.00</p>
<p>Copy to Auditor 9/14/01</p> <p><i>Paula</i></p>	<p>FILED At <u>9:40</u> O'clock <u>A.M.</u> SEP 12 2001 BARBARA MEYER DISTRICT CLERK GILLESPIE COUNTY, TEXAS <i>By: [Signature]</i> <i>[Signature]</i></p>
Thank you!	Total \$250.00

GMA COURT REPORTING
GINGER MITCHELL & ASSOCIATES
P. O. BOX 293297
KERRVILLE, TEXAS 78029-3297
830-895-2477 FAX 830-990-4126

DATE: 9-7-01

TO CLERK OF COURT FOR CAUSE NO. 9284
Gillespie COUNTY, TEXAS

Enclosed please find Filing Certificates for deposition(s) taken in the above-referenced deposition. Please file stamp all copies, keep the original for your court file, and return the copies to the attorneys of record in the enclosed addressed, stamped envelopes.

Thank you very much for your assistance in this matter.

GINGER L. MITCHELL, CSR-RPR

Enclosures

(3 Sets of
Certificates)

CLERK OF DISTRICT COURT
KERRVILLE, TEXAS

FILED
At 11:11 O'clock A.M.

SEP 13 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Barbara Meyer
Deputy

11 01:11 PM '01

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216TH JUDICIAL DISTRICT

Brief In Support of Emergency Sua Sponte Order

Avian Ann Biedermann files this brief in support of the August 20, 2001 "Emergency Sua Sponte Order" [Exhibit A] of this court showing the court as follows:

1. Focus of Brief

This brief focuses only on the parent-child aspects of the divorce between Kenneth Kyle Biedermann and Avian Ann Biedermann.

FILED
AT 10:00 O'CLOCK **AM**

2. Relevant Orders

SEP 26 2001

The relevant orders relating to the focus of this brief are:

BRANDI MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By *Jan Davis*
Chief Deputy

A. December 18, 2000, 12:30 p.m. Temporary Restraining Order:

... Petitioner and Respondent are immediately restrained from:

* Molesting or disturbing the peace of the children...

B. February 19, 2001 Mediation Agreement on Temporary Orders until March 22, 2001:

11. Each party shall refrain from engaging in conduct designed to alienate the children against the other parent.

C. **May 14, 2001 Agreed Temporary Orders Pursuant to "Mediation Agreement on Temporary Orders Until March 22, 2001:**

Minimizing Disruption

IT IS ORDERED that to minimize disruption of the children's education, daily routine, and association with friends, Avian Ann Biedermann and Kenneth Kyle Biedermann shall:

1. Refrain from engaging in conduct designed to alienate the children against the other parent;
2. Abide by the "Parent's Foals, Agreement and Guidelines Relating to the Children, " attached hereto as Appendix 2. (See immediately below)

* * * * *

[Appendix 2]

Kyle and Avian agree to attempt at all times, to act in a manner consistent with the following goals, which Kyle and Avian believe to be in their children's best interest:

- * to provide the children with an emotional environment in which each is free to continue to love the other parent and to spend time with the other parent;
- * to encourage good feelings from the children about the other parent and their extended family, if any;
- * to plan together as parents rather than through the children;
- * to not take sides or take issue with decisions or actions made by the other parent, especially in front of the children;
- * to present a united front on the handling of any problems with the children;
- * to use discretion as to the time and frequency of phone calls to the children;
- * to behave discreetly with other people in the children's presence; and,

* * * * *

Kyle and Avian agree that it is in the best interest and welfare of the children that the children be accorded rights and as such are third-party beneficiaries of this agreement and stipulation between their parents. Both parents acknowledge the following rights of the children, to wit:

- * the right to a continuing relationship with both parents;
- * the right to know and appreciate what is good in each parent without one parent degrading the other;
- * the right to have a relaxed, secure relationship with both parents without being placed in a position to manipulate one parent against the other.

* * * * *

Temporary Injunction as to Children

The Court finds that, based on the public policy considerations stated in section 153.001 of the Texas Family Code, it is in the best interests of the children that the following temporary injunction be issued and related orders be entered.

IT IS ORDERED that Avian Ann Biedermann and Kenneth Kyle Biedermann and their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise are temporarily enjoined from:

1. Molesting or disturbing the peace of the children or of any other party.

* * * * *

Temporary Injunction

The Court finds that the parties have agreed that the existing restraining order shall remain in effect and to the entry of the following temporary injunctions while this case is pending.

The temporary injunction granted below shall be effective immediately and shall be binding on Avian Ann Biedermann and Kenneth Kyle Biedermann;

on their agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

D. May 14, 2001 Temporary Orders hearing:

[p.7] MS. BERGMAN: Our office, the office - Law Offices of John Nichols, will call Dr. Jack Ferrell in San Antonio and set up appointments for custody evaluation, the parties and the children.

[p. 10] THE COURT: All right, then this is the agreement you have worked out this morning?

MR. HALM: That is correct, Your Honor.

THE COURT: The Court will consider that a Rule 11 Agreement and proceed on it.

E. May 31, 2001 Telephonic Conference:

[p. 12] THE COURT:... I think the main thing is this discussion business; and all the family members are included, the parents, and any other aunts and uncles, and so forth, and friends of the family are not to discuss this matter with the children.

F. June 4, 2001 Rule 11 Agreement for Additional Temporary Orders:

Pursuant to Rule 11, Tex. R. Civ. P., Avian Ann Biedermann, Petitioner, and Kenneth Kyle Biedermann, Respondent, through their respective attorneys of record, agree to additional temporary orders as follows:

3. The Parties agree and IT IS ORDERED that Dr. Jack G. Ferrell, 14310 Northbrook Dr., Suite 120, San Antonio, Texas 78232, 210-499-5025, 210-499-5825 facsimile, is appointed to interview, examine, evaluate, and consult with the parties and the children and the children to prepare a custody evaluation to be filed with the Court on or before August 1, 2001. The parties further agree and IT IS ORDERED that the earliest available appointments for the parties and the children shall be made through the Law Offices of John Nichols and notices sent to Allen J. (Jody) Halm forthwith.

G. July 5, 2001 Modification Hearing:

[pp. 111 & 112] MR. RUDKIN: I was going to raise one additional matter. I met with the children and in my perspective, these children are nine down to five years old. They have way too much knowledge - - -

THE COURT: Of what's going on?

MR. RUDKIN: - - - the buzz words and consternation and fighting back and forth with mom and dad, lawyers and this and that. I would request that there be an admonition that neither party discuss in any fashion, shape, or form the litigation process, court proceedings, anything to do with this matter.

THE COURT: That's an Order of the Court, should not be discussed or even mentioned other than the fact that if you have to, that we will be deciding it before school time, but it's very important; and financial conditions and so forth, I think the children should not be involved in this process.

If either parent - I find out either parent is making comments, derogatory comments or such about the other parent, this Court will certainly take sanctions against the person making the comments. It's very important, and I think - and I think the grandparents, this would also apply. I think the grandparents can do a lot on both sides, a lot to kind of ease the pressure of the children.

3. Dr. Jack Ferrell's Summary Report

Dr. Jack Ferrell is the court approved psychological and child custody evaluator on this case. Dr. Ferrell has prepared a 16 page initial report which has been filed with the court. In his report Dr. Ferrell states:

- A. He has evaluated Kyle and Avian Biedermann and the four Biedermann children. [p. 1]
- B. The evaluation period covered four months (April 17, 2001 to August 14, 2001). [p. 1]
- C. The evaluation consisted of:
 - (1) development of social history
 - (2) home visit evaluations
 - (3) the administration of psychological tests

- (4) review of specific documents, including medical reports and other health care
 - (5) the CASA Report
 - (6) school records
 - (7) collateral reports and anecdotal data. [p. 1]
- D. Kyle Biedermann “did not fill out this form” when asked to describe his relationship with Kyla Biedermann, age 9. [p. 10]
- E. Kyla Biedermann related: “we” think mom has problems and then relates material or allegations reported by the father or suggested to her by him. She clearly is the father’s biggest advocate and apparently discuss his feeling regarding the divorce often. [p. 10]
- F. Issues about the father sleeping nude with the children were also addressed and the Court Ordered that he not sleep with the children at all. He did not during the trip to Florida, but did permit one child each night to sleep in a bed right next to his in his room as a special treat. He reported that he did so because the children wanted to and they would have been unhappy if he had not. He failed to appreciate that perhaps this was not an altogether appropriate manner in which to address the Court’s Order, nor was the children’s desire sufficient to abdicate (minimally) his responsibility in this regard. He appears to at times push the envelope and may have difficulty in some areas with respect to boundaries, which does concern this examiner. [p. 14]
- G. Kyle Biedermann ... must cease and desist from further alienation of the children. [p. 16]
4. **Transcripts from Audio Taped Telephone Conversations of the Biedermann Children with Kenneth Kyle Biedermann in Violation of Relevant Orders:**
- A. In the May 14, 2001 Agreed Temporary Orders Pursuant to “Mediation Agreement on Temporary Orders Until March 22, 2001” the parties agreed to refrain from engaging in conduct designed to alienate the children against the other parent. The following audio taped conversations occurred after the Agreed Temporary Orders pursuant to the Mediation Agreement were signed, and thus, Kenneth Kyle Biedermann is in direct violation of the Orders.
1. **Audio Taped Transcript of May 24-25, 2001:**

KYLE BIEDERMANN: Well, they just said I should be allowed to talk to you girls. That's what, um, the court says. And, Mommy wouldn't let me talk to you girls last night.

EMILY: Why?

KYLE BIEDERMANN: I don't know. You'll have to ask Mommy that.

EMILY: Well, Daddy, Loren and Kyla were crying about you, 'cause they thought the police took you to jail.

KYLE BIEDERMANN: No, no. Not at all. They, uh, you know, they, uh, I just came, I, you know, just waited for them to come, so they would know that Mommy's not letting me talk to you girls.

EMILY: (inaudible)

KYLE BIEDERMANN: (inaudible) that, you know, I'm allowed to talk to you girls, and Momma wouldn't let me. So, I came over to see you. Now, where were you, Emmy?

EMILY: Um, I'm at home, on the couch.

KYLE BIEDERMANN: No, when, where were you, last night?

EMILY: Oh, why?

KYLE BIEDERMANN: Oh, well, just, did you look out the window? Did you see anything?

EMILY: Well, um, we thought that, um, we thought that you, uh, got arrested.

KYLE BIEDERMANN: No, no. I didn't do anything wrong.

KYLE BIEDERMANN: Dana True, you hang up right now. Dana True, if you don't hang up, you will be in trouble when I see you. Do you understand me? One at a time—

DANA TRUE: (inaudible) go on a trip.

KYLE BIEDERMANN: —hang up; hang up the phone, Dana True, now.

DANA TRUE: (inaudible) go with Mommy, right?

KYLE BIEDERMANN: Well, we'll see. But, you're gonna get in trouble if you

don't hang up the phone—

DANA TRUE: For what? What happened?

KYLE BIEDERMANN: Dana True, if you do what I told you—

DANA TRUE: But, what happened?

KYLE BIEDERMANN: Dana True, I'm gonna spank you so hard, and you're not gonna get to do some things this weekend, if you don't hang up the phone right now. You'll get your turn.

2. Audio Taped Transcript of May 24-25, 2001:

KYLE BIEDERMANN: Dana True, get off the phone. Between us, Kyla, Mommy went ahead and just got you all involved, and got you girls all upset about calling the cops. But, there's no reason to do that. And, she was in the wrong. Now, I'm not allowed to come to the house. But, I know I was wrong, too. But, I'm gonna come there, 'cause I want to see you girls, and I'm supposed to be able to. It was wrong for Mommy not, not to let me talk to you girls. Do you understand?

KYLA: Uh-huh.

KYLE BIEDERMANN: That's the whole, if she doesn't want, if she wants to protect you girls from this, and keep you, you know, keep, you know, not have you affected by it, right?

KYLA: Yes.

KYLE BIEDERMANN: And, uh, I, I would think that calling the police so quickly, like that, really gets you involved, doesn't it?

KYLA: Uh-huh.

3. Audio Taped Transcript, undated, 2001:

DANA TRUE: Could you come by?

KYLE BIEDERMANN: Well, I can't come by. I would, right now, if I could, Dana True.

DANA TRUE: Why?

KYLE BIEDERMANN: Well, Mommy won't let me come by.

* * * * *

DANA TRUE: Well, why won't you just drive over here?

KYLE BIEDERMANN: Well, last time I came over, she called the police on me, Dana True.

- B. In the May 14, 2001 Agreed Temporary Orders Pursuant to "Mediation Agreement on Temporary Orders Until March 22, 2001" the parties agreed to abide by the "Parent's Foals, Agreement and Guidelines Relating to the Children." A specific provision in the agreement states that the parties agree to "plan together as parents rather than through the children." The following audio taped conversations occurred after the Agreed Temporary Orders pursuant to the Mediation Agreement were signed, and thus, Kenneth Kyle Biedermann is in direct violation of the Orders.

1. **Audio Taped Transcript May 24-25, 2001:**

KYLE BIEDERMANN: I told you to call me back, and you didn't, right?

KYLA: Yes, I got the information. I went and asked Tara for the information—Dana True. I went and asked for the information, and, Mommy asked me why. And, I said, I called, I said, because Daddy wants to know. And, I called him, and he said, get the information and call him back. She said, no. Go to bed.

KYLE BIEDERMANN: Well, I didn't get a chance to talk to your sisters, did I?

KYLA: No.

KYLE BIEDERMANN: See. I get to talk to all of you every night. So, did you think the police took me in to jail?

* * * * *

KYLE BIEDERMANN : I need to get to talk to you girls every day.

KYLA: Did Momma get in trouble?

KYLE BIEDERMANN: Well, I don't know. We'll have to ask her. It also says, if you go out of Gillespie County, (inaudible) she's got to let me know when she takes you. And, that, that's why she wouldn't let me (inaudible)—

KYLA: Dana True.

KYLE BIEDERMANN: —and so, she wouldn't tell me that, either. That's against the court order, also.

KYLA: Can you come with us?

KYLE BIEDERMANN: Kyla, it's not a good thing for me to be— I mean, I would love to go with you girls. But, Mommy doesn't want me to be there, and you know that.

- C. The May 14, 2001 Agreed Temporary Orders Pursuant to "Mediation Agreement on Temporary Orders Until March 22, 2001" the parties agreed to abide by the "Parent's Foals, Agreement and Guidelines Relating to the Children." A specific provision in the agreement states that the parties agree to "present a united front on the handling of any problems with the children."

1. **Audio Taped Transcript July 2001:**

AVIAN BIEDERMANN: If they're not going to Fiesta, Texas tomorrow, they need to come home.

KYLE BIEDERMANN: Okay. How about you take them to Grandma and Pappa's to spend the day.

AVIAN BIEDERMANN: I don't know. Why don't you (inaudible) think about it?

KYLE BIEDERMANN: How about Wednesday? How about Thursday? Do I have to go to court, in a hearing, just to see the kids more? Instead of you lying about me not wanting the kids?

AVIAN BIEDERMANN I didn't lie.

KYLE BIEDERMANN: Yeah. You guys lied, telling them that we didn't want to see the kids any more. I (audible) one day a week. That's not the case.

AVIAN BIEDERMANN: You're the one that came up with that.

KYLE BIEDERMANN: I want it just for 30 days. That was what that was for. 30 days, and you—

AVIAN BIEDERMANN: You're, hey, I didn't like, you're the one that came up with the plan.

KYLE BIEDERMANN: Okay. I'm going to court to get the kids more often. Do I have to go to court, or would you just let me see the children more often? Yes or no?

AVIAN BIEDERMANN: I already said, if you want to take the children to Fiesta, Texas tomorrow, that's fine.

KYLE BIEDERMANN: Okay. I'm going to court. You already know that. We're already going to court, just so I can see the kids, 'cause you're a fucking asshole.

AVIAN BIEDERMANN: I'm a what?

KYLE BIEDERMANN: You heard me. You won't even let me see the girls.

AVIAN BIEDERMANN: That is not true.

AVIAN BIEDERMANN: Discuss it with my lawyers.

KYLE BIEDERMANN: Oh, it's for your lawyers' kids? Oh, my goodness. I didn't know that they were the lawyers' kids. Oh, gosh. I'm glad that they care more about your children than you do. I'm glad to hear that. We're going to court, so I can see the kids more. And, that's because you're making me. 'Cause, you don't care about the kids. All you want to do is hurt me. You're not gonna hurt me very long. And, the truth be know, we have to go to court, just so I can see them. The kids know that. You don't have to hide it from them. You can't hide it from them.

- D. In the July 5, 2001 Modification Hearing the court made it explicitly clear that the children should not be involved for any reason and that sanctions would be imposed against any person making derogatory comments about the other parent.

July 5, 2001 Modification Hearing:

THE COURT: That's an Order of the Court, should not be discussed or even mentioned other than the fact that if you have to, that we will be deciding it before school time, but it's very important; and financial conditions and so forth, I think the children should not be involved in this process.

If either parent - I find out either parent is making comments, derogatory comments or such about the other parent, this Court will certainly take sanctions against the person making the comments. It's very important, and I think - and I think the

grandparents, this would also apply. I think the grandparents can do a lot on both sides, a lot to kind of ease the pressure of the children.

The following audio taped conversations occurred after the July 5, 2001 Modification Hearing, and thus, Kenneth Kyle Biedermann is in direct violation of the Court's Order.

1. Audio Taped Transcript of July 6, 2001:

KYLE BIEDERMANN: Uh-huh. Well, I mean, have you been home? I've called twice.

KYLA: Yeah.

KYLE BIEDERMANN: (inaudible)

KYLA: It did.

* * * * *

KYLA: Um, yeah. Um, hold just a minute. I need to tell Momma something. Momma, Momma? I need to go to the bathroom. Okay. Momma doesn't like, Momma doesn't know that, you know, when I talked to you, when you were (inaudible)?

KYLE BIEDERMANN : Uh-huh.

KYLA: Yeah? Well, um, Tara was down there. When she was about to come upstairs, but she heard me talking to you about the thing. She had heard me talking to you, and telling you what I was telling you, and she got pretty mad. And, and she got (inaudible), too. And, um, so, she sent one of my sisters up to come get me, um, to open up presents and cake.

KYLE BIEDERMANN: Uh-huh.

KYLA: Yeah? Um, well, Momma made up a new rule that we cannot go, um, out of the room where a grown-up is in.

2. Audio Taped Transcript of August 3, 2001:

EMILY: You glad I remembered to call you back?

KYLE BIEDERMANN : Yes, I am. Very, very much. Very, very, very much. You know, 'cause I, see, I didn't talk to you girls for a couple of days, and I kept calling, calling, calling. And, I never got a call back.

EMILY: You kept doing what?

KYLE BIEDERMANN: I kept calling you girls and leaving messages. And, I never got a call back. So, I didn't know what was going on.

EMILY: Well, Momma says that we can't answer the phone, without her permission.

KYLE BIEDERMANN: Well—

EMILY: She says that if we do, she's gonna spank us (inaudible).

KYLE BIEDERMANN: Oh, that's not right, Emmy. Oh, Emmy. You girls are big enough. You don't need to get spanked.

EMILY: No, that's what we get all the time. Every single day.

KYLE BIEDERMANN : **Well, what if somebody asked you questions about that? What would you say? What if the, what if the court asked you something? What would you say?**

EMILY: Um, a question?

KYLE BIEDERMANN : Yeah. What if they ask you if you still, if you got (inaudible), what would you say?

EMILY: I would say that Momma switch, spank us every day.

KYLE BIEDERMANN: And, what would they spank you for?

EMILY: What?

KYLE BIEDERMANN: What would they spank you for?

EMILY: Calling on the phone without permission, when you say that we can, you know.

3. **Audio Taped Transcript of August 3, 2001:**

KYLE: Yeah, wait 'til you see it. It's really good. I just thought I'd get you today, and then we could, you know, then you could be at Ace with me, tomorrow, to help me do the garage sale. **I, there's no reason for you not to be able to come over here, except that Mommy doesn't want you to see me. That's it.** Well, we just have to wait, huh, precious?

KYLA: Dad, you know what?

KYLE: What?

KYLA: Momma's watching movies for child discipline.

KYLE BIEDERMANN : **Oh, gosh. I guess she needs to learn something. She's just spanking you girls for—**

KYLA: Nothing.

KYLE BIEDERMANN : —for no reason. And, that's not good, is it?

KYLA: Uh-huh. I think the child discipline is telling her that.

* * * * *

KYLE BIEDERMANN: Well, why don't you bring the video with you? Okay? Put it in your bag. And, I'll watch it and see what I think.

KYLA: Okay. 'Cause, we don't know. We just know she's watching it, when we are not around.

* * * * *

KYLE BIEDERMANN: **Well, I mean, that's, the Bible says that, you know. I don't know. The problem is that you girls shouldn't be spanked when Mommy (inaudible), like not letting you come to the phone.**

KYLA: Uh-huh.

KYLE BIEDERMANN: **Or, when you come, not letting you see your dad.**

KYLA: Uh-huh.

KYLE BIEDERMANN: **That's bad.**

KYLA: Well.

KYLE BIEDERMANN: Oh, my precious.

LOREN: I want to talk to Daddy.

KYLE BIEDERMANN: Well, no matter what, Kyla, I'm gonna see you Sunday morning. Okay?

4. Audio Taped Transcript of August 3, 2001:

KYLE BIEDERMANN: Hi, precious. How'd you know it was me.

KYLA: 'Cause the phone says who it is.

KYLE BIEDERMANN: Oh, it does?

KYLA: Yeah.

KYLE BIEDERMANN: That's why Mommy doesn't answer 'cause she knows it me.

KYLA: Yeah.

KYLE BIEDERMANN: How are you girls going? I haven't talked to you for a couple of days.

KYLA: Fine.

KYLE BIEDERMANN: What did you girls do yesterday?

KYLA: We went swimming.

KYLE BIEDERMANN: Where'd you go.

KYLA: (indiscernible) Johnson's.

KYLE BIEDERMANN: Uh-huh.

KYLA: But we went really late.

KYLE BIEDERMANN: What do you mean?

KYLA: We went really late and Mom's was being mean. I asked her if we could come by grandma and papa's and get the goggles. And she said, we're not making any stops. And so Loren put the top of her bathing suit in the clothes that we gave you. And Mamma spanked me for giving the clothes to you.

KYLE BIEDERMANN: Uh-huh. Oh God. You could have come and gotten them. They're in my truck.

KYLA: I know.

* * * * *

KYLE BIEDERMANN : I'll take you to the bus.

KYLA: You will?

KYLE BIEDERMANN : Yes.

KYLA: Mamma said we weren't going to get to see you.

KYLE BIEDERMANN : That's not the truth. I'll pick you all up at eight o'clock in the morning, and I'll take you to the bus.

* * * * *

KYLE BIEDERMANN : **Now, can you believe that Mommy wasn't going to let me see you girls at all this weekend. It's my weekend. Did you know is my weekend to see you girls. Now, I'm not going to see you at all.**

Why would she do that Kyla?

KYLA: Well, Daddy, I wanted choir.

KYLE BIEDERMANN: I know, I'm glad you got choir.

But why can't I see you tonight or tomorrow? Or tomorrow?

KYLA: Tonight and tomorrow? Or today?

KYLE BIEDERMANN: Yes. You know, if she's going to take me days, then why can't she give me another day?

KYLA: Why is she taking it? How could she do that? Why can't you?

KYLE BIEDERMANN: ***Because her attorneys are ... They don't care about you girls. They just want to hurt me. That's it. They're good at it. They don't care one bit about what you girls want. They are trying to keep you away from me.***

KYLA: We won't let them.

KYLE BIEDERMANN: And they're doing everything they can to do that, Kyla.

KYLA: Well, how come they say that they love us?

KYLE BIEDERMANN: Well, what do you think?

Call and see ... You call and say, hey listen, if you love me so much, let me see my daddy for a day. What do you think they'll say?

KYLA: I don't know – They'll laugh at me.

KYLE BIEDERMANN: Okay.

KYLA: And then they'll say, huh, well, that's the court's decision.

KYLE BIEDERMANN: It's not the court's decision.

KYLA: Mommy says it is.

KYLE BIEDERMANN: **Yeah, well, she's just telling you a lie, Kyla.**

It's up to Mommy, completely. Nobody tells her that she can't let – She has control of you girls when she has you, and she can do whatever she wants. She can let me have you. She can let you go with me if she wants. It's all up to her. The court doesn't tell her that she can't. All right.

When it was Mother's Day. Remember when it was Mother's Day.

KYLA: Mother's Day.

KYLE BIEDERMANN: Mother's Day, was Sunday. That was my day. I let you go with Mommy, didn't I.

KYLA: Why?

KYLE BIEDERMANN: Because that was the right thing to do.

The court said it was my day. But does that mean that I can't let Mommy have you? Of course not. It's up to me. It's my day, and if I want to let you go with Mommy, I can let you go with Mommy.

Mommy has given you to me one other day. We went someplace and she gave me – she let you come early, right? A few times.

KYLA: Yes.

KYLE BIEDERMANN: She decided to let me come early.

KYLA: Yeah.

KYLE BIEDERMANN: The court says at five o'clock I can pick you up. But Mommy let you go early. Why? Because it's up to Mommy. The court doesn't tell her you can't do that. The court didn't tell me I can't let you girls go with Mommy on Mother's Day. But I let you go. 'Cause that's the right thing to do. The court will never tell us you can't do anything.

KYLA: Mommy has gotten worse.

KYLE BIEDERMANN: I know she has, Kyla. I'm just gonna – You know. I'm sorry that you that you girls have to go through this. I'm just sorry you have to go through it.

* * * * *

KYLA: Mamma, daddy wants to talk to you.

AVIAN BIEDERMANN : Yes.

KYLE BIEDERMANN: Avian, I don't want any arguments or complaints, but you get the girls through the fourth, which is Saturday and I get them on the 5th.

AVIAN BIEDERMANN: No, you only get two of them on the 5th.

KYLE BIEDERMANN: I'm picking all up at eight o'clock in the morning. I talked to my attorney. And I'll have the police there if you don't give them to me. You call your attorney if you want to change. Okay, let me talk to the girls. All four at eight o'clock in the morning.

5. **Audio Taped Transcript of August 3, 2001:**

EMILY: That's not fair, everybody else has dads.

KYLE BIEDERMANN: **Well, you tell Mommy. She's the one keeping you away from me, Emmy. There's nothing I can do about it. It's her and her attorneys. They don't want you to see me. They won't let me pick you**

up at eight o'clock in the morning on Sunday, did you know that?

EMILY: Why?

KYLE BIEDERMANN: Because they don't want me to see you

Mommy just told me she won't let you come at eight o'clock in the morning. She said, I can't see you and Kyla at all. I said, uh-huh, I'm going to pick them up at eight o'clock in the morning. So don't let her trick you Emmy. I'm picking you up at eight o'clock in the morning, no matter what. If not, I don't get to see you at all. And for some reason, I don't know why, Emmy, they don't want you to see me.

EMILY: Well, why don't you then tell the court?

KYLE BIEDERMANN: I did tell the court, but I can't do anything about it. They played some mean tricks, Emmy.

EMILY They're not going to do anything about it?

KYLE BIEDERMANN: I can't do anything about it.

EMILY: No, the court.

KYLE BIEDERMANN: You just have to ask Mommy why. You ask Mommy why. She won't tell you. But the bottom line is, they didn't want you to see me, and so they tricked the court and made it out so that – made sure that I wasn't going to get a chance to see you.

EMILY: That's not fair.

KYLE BIEDERMANN: I know. I'm sorry, Emmy. But I'll see you Sunday morning, Okay?

EMILY: Everyone else gets to see their dad almost every day.

KYLE BIEDERMANN: Well, tell Mommy that. Ask her if maybe I can take you out for ice cream or something. Okay?

EMILY: Okay.

KYLE BIEDERMANN: Okay. All right.

EMILY: Okay.

KYLE BIEDERMANN: Okay. Well, Emmy, I got to go.

* * * * *

KYLA: I want you to call.

KYLE BIEDERMANN: Well, I'll be happy to do anything Kyla. Just remember, I'll pick you up at eight o'clock in the morning, and don't let Mommy fool you that I'm not.

KYLA: **Why is she always trying to lie to us that we're not.**

KYLE BIEDERMANN : 'Cause –

6. Audio Taped Transcript of August 8-10, 2001:

KYLE BIEDERMANN: But, you can also tell Mommy, Mommy, please don't spank Loren. And, uh, if she does, you can call your attorney.

EMILY: Attorney?

KYLE BIEDERMANN: You can call the, the, there's a, that man, Kurt Rudkin, that we sat around the room and talked to, that one day at Grandma and Pappa's.

EMILY: Yes, but we don't know his phone number.

KYLE BIEDERMANN: **I'll give you the phone number, if you want to call. But, you can tell Mommy, if you spank, that, you know, tell that you'll call your attorney, if you have to. Okay? I don't want you to get in trouble Emmy. I'm sorry. Oh boy. I just love you girls. I know God's gonna take care of you girls, no matter what, Emmy.**

EMILY: Okay.

KYLE BIEDERMANN : God's watching every second.

EMILY: If I find Momma, before she spanks Loren, I'll tell her that you wanted to talk to her.

KYLE BIEDERMANN: Yeah.

EMILY: And to call her.

KYLE BIEDERMANN: That's right.

EMILY: But, if it doesn't work?

KYLE BIEDERMANN: Then, say, then, then you're gonna, then Daddy's gonna call the attorney.

* * * * *

KYLE BIEDERMANN: Okay. Lord Jesus, we just thank you that you love Kyla and Emmy and Loren and Dana True so much, and that you've promised to protect them in every way, Lord. And, we just pray that, that they will in no way have any anger or bitterness toward Mommy, even though Mommy may not be being nice to them—

EMILY: Well, I'll tell her, that, uh, that you're gonna call your attorney—

KYLE BIEDERMANN: Uh-huh.

7. Audio Taped Transcript of August 8-10, 2001:

KYLE BIEDERMANN : Oh, girls I am so sorry. Oh, girls, I just can't believe this. Do you remember anything else that you talked to the guy about, yesterday, precious?

KYLA: Uh, no, not really.

KYLE BIEDERMANN: Did he ask you anything about, um, watching movies that were, you know, about, um, babies being born?

KYLA: Yes. He asked me that question, um, uh, asked me, did you ever watch a movie of a baby being born, with one of your parents? And, I said, um, yes, but it wasn't with my parents. It was with Heather, I said, my cousin.

KYLE BIEDERMANN : Uh-huh.

* * * * *

KYLE BIEDERMANN: Yeah. Anything else, Kyla, that he asked for?

KYLA: No, except for the potty stuff, you know. And, I told him about that.

KYLE BIEDERMANN: About, the only thing you knew about was the kitten?

KYLA: Yeah. I said the kitten peeing on me, uh, because it was me, it was my fault. But, um, and then, my other cat, um, peeing on my sleeping bag.

KYLE BIEDERMANN : Was he trying to ask if it, did he think it was me that peed on you?

KYLA: Well, actually, um, I don't know what, I told him about the cats. And then, I told him the one time, one morning, I told him that, when you were, you used to live with us, we used to all get up in the morning. We used to all come on you and Momma's bed, and when we did, um, Loren came, and she got sick. And, she threw up.

KYLE BIEDERMANN : Uh-huh.

KYLA: Sort of on you. I told him that.

KYLE BIEDERMANN: Yeah. Okay, precious. All right, precious. Well, what kind of doughnuts do you want?

KYLA: Um, let me see. Uh, do they still have tiger tails?

KYLE BIEDERMANN : Yeah. Want a tiger tail?

KYLA: I guess.

KYLE BIEDERMANN: Okay.

KYLA: And, if they don't, um, I, I don't know what I want.

KYLE BIEDERMANN: Well, don't let Mommy know I'm coming.

KYLA: Okay.

KYLE BIEDERMANN: And then, you guys just look out the window. It's gonna take me about 15 minutes to get them. Okay?

KYLA: Okay.

8. Audio Taped Transcript of August 8-10, 2001:

KYLE BIEDERMANN: Hi.

KYLA: Um, you know, right after I called you, I went to the beauty shop. I sat down, and the phone rang, and it was you.

KYLE BIEDERMANN : Oh, good, Kyla.

KYLA: 'Cause, you got right back, right, you got back right after I called you.

KYLE BIEDERMANN: Well, good.

KYLA: Did she, did, um—

KYLE BIEDERMANN : Linda told me you called.

KYLA: Yeah?

KYLE BIEDERMANN: *I just wanted to make sure I got you. I didn't think I'd get you on the phone. So, is Mommy taping these phone calls?*

KYLA: How am I supposed to know? I think so.

KYLE BIEDERMANN: Well, you know, is there a record button, or some kind of beeping thing on the phone, that you have to (inaudible)—

KYLA: I don't know.

* * * * *

KYLA: Okay, Daddy? I think I told the guy about, um, what Momma and, I know I told the guy that, um, that, about the, them telling us it's our fault that ya'll have arguments. And, I told him that me and Laura think, feel like, um, uh, we, it's our fault that the divorce came up.

KYLE BIEDERMANN : Uh-huh. But, that they're making you feel that way?

KYLA: Yeah.

KYLE BIEDERMANN : Okay.

KYLA: I told them all the bad things about Momma, and I told them (inaudible).

9. Audio Taped Transcript of August 8-10, 2001:

KYLE BIEDERMANN : Next summer. A whole school year, when you're off for the summer, again, and you're—What's the little beeping noise?

DANA TRUE: I don't know.

KYLE BIEDERMANN : **That must be the, that must be the tape. They're probably taping our conversations, girls.**

DANA TRUE: What?

KYLE BIEDERMANN: Who's on the phone, right now?

DANA TRUE: Me.

KYLE BIEDERMANN: Just you?

DANA TRUE: Yes.

KYLA: And me, and Kyla.

KYLE BIEDERMANN: You hear that little beeping noise? The beep-beep?

KYLA: Yes.

KYLE BIEDERMANN: That must be the, that they're taping it.

* * * * *

KYLA: —she told us that, um, she told us that Daddy shouldn't be coming by, 'cause it makes, 'cause we know it makes trouble. And, she said, I don't come by and see you, when, um, when you're with Daddy. And, I said, yeah, that's because you don't love us that much.

KYLE BIEDERMANN : Oh. Oh, my precious. Well, that's because she sees you, all the time. I don't get to see you. And, that's because I want to see you, and she really doesn't need to, 'cause she sees you all the time.

KYLA: Well, that's what I told her, because she doesn't love us.

KYLE BIEDERMANN: Yeah. And, what'd she say?

KYLA: She said, no that is not true.

KYLE BIEDERMANN: Yeah, well. See, Kyla, you understand what's going on. That's what's so good, Kyla. You can see right through all that

garbage. You can see right through it. And, uh, and, if you girls want to see me, that's what's important. That's what you girls want, not what she wants. Right?

KYLA: Uh-huh.

KYLE BIEDERMANN: Well, I appreciate you girls very much. I appreciate it very much. All right, girls, why don't you try to give me a call a little bit later, Okay?

KYLA: Okay.

10. **Audio Taped Transcript of August 16, 2001:**

KYLA: It was good. Where did you go?

KYLE BIEDERMANN: Huh? (inaudible)

KYLA: (inaudible) And, that's it?

KYLE BIEDERMANN: That's it.

KYLA: (inaudible) Why? We still haven't convinced them yet? (inaudible)

KYLE BIEDERMANN: I've got (inaudible)

KYLA: Why haven't we? We've told them everything that Momma does wrong. There's so many things bad. And, everything you do right. And, we still haven't convinced them?

KYLE BIEDERMANN: Not yet, Kyla.

KYLA: Why? What more do they need?

* * * * *

KYLA: On Monday, and then Momma gets us again? Why? I feel—

KYLE BIEDERMANN: Well, it's gonna be like this for a while. I'm sorry.

KYLA: *Have we come to a point where I can go down to pharmacy and call you?*

KYLE BIEDERMANN: I don't thing (inaudible)

KYLA: Why?

KYLE BIEDERMANN: Kyla, I can't talk about this (inaudible), okay?

KYLA: Why?

KYLE BIEDERMANN: I just can't.

KYLA: What's wrong? Do they know that you're thinking it?

KYLE BIEDERMANN: **Well, no. But, they tape everything you say, Kyla. So (inaudible)**

KYLA: Who does?

KYLE BIEDERMANN : (inaudible) I'll talk to you tomorrow, okay? I'll come and get you tomorrow, and (inaudible)—

5. **Actions of Kenneth Kyle Biedermann Violating “Emergency Sua Sponte Order” of August 20, 2001**

Emergency Sua Sponte Order in pertinent part states:

THEREFORE, the Court does make and enter the following Orders which are effective immediately for the protection of said minors and for their best interest.

- (1) The original Petitioner, AVIAN ANN BIEDERMANN, the natural Mother, shall be the sole temporary managing Conservator of the four minor children with all the power, authority, duties, etc., as provided by law.
- (2) Until further Orders of the Court, the natural Father, KENNETH KYLE BIEDERMANN, the original Petitioner, shall have no contact or communication, **in any manner, way, form or fashion** with said minors until further Orders of this Court. Moreover, said Father shall not go, for any reason, within one hundred (100) yards of the original Petitioner's residence and/or where a reasonable person would anticipate said minors being at such time, including schools, churches, etc.
- (3) Any and all Orders and agreements heretofore made in this case, not in conflict with this Order, or that does not violate [sic] the intent or spirit of this Order, shall remain in full force and effect.

- (4) The Father shall not contact and/or attempt to contact, in any manner, the Mother, except by or through her attorney, the attorney ad litem in this case, Dr. Jack Ferrell or such party the said Dr. Jack Ferrell shall designate in writing.

Kyle Biedermann has directly violated the Emergency Sua Sponte Order on at least four instances:

1. On **September 10, 2001**, during the school's open house, Dana True's teacher, Sharon Holmes, told Avian Biedermann that Kyle Biedermann has called the school to talk to her. Kyle Biedermann attempted to convince Sharon Holmes to allow Kyle Biedermann to see and speak with Dana True while she is at school.
2. On or about **September 14, 2001**, Kyle Biedermann threatened Avian Biedermann's brother-in-law, insisting that he convince Avian Biedermann to let him speak with the children. Avian Biedermann's brother-in-law works at Ace Hardware for Kyle Biedermann.
3. On **September 15, 2001**, Brad Sultemeier approached Avian Biedermann after church and forcefully insisted that he speak with her. He insisted that Avian Biedermann let Kyle Biedermann visit with the children. Brad Sultemeier is a friend of Kyle Biedermann's, they play basketball together.

The instances described directly violate the Sua Sponte Order, which the Court entered on August 20, 2001. Kyle Biedermann was ordered by this Court to refrain from contacting or communicating with the children and Avian Biedermann *in any manner, way, form or fashion*. Kyle Biedermann intentionally engaged the help of his friend to harass Avian Biedermann at church. Kyle Biedermann went straight to Dana True's teacher to coerce her into helping him violate the Emergency Sua Sponte Order and see Dana True. Kyle Biedermann took advantage of his position at Ace Hardware to entice and blackmail Avian Biedermann's brother-in-law into helping him violate the Order. Kyle Biedermann obviously fails to recognize the serious nature of this Order and of the Court's authority to the detriment of the children.

6. **Authority for the August 20, 2001 "Emergency Sua Sponte Order"**

The Texas Supreme Court has previously addressed this type of order, with approval, in *Page v. Sherrill*, 415 S.W.2d 642, 645 (Tex. 1967), and stated:

There would seem to be no room for doubt of the power of a court to enter an order, without notice to the parents, for the temporary custody of a child of parties to a pending suit for divorce.

Statutory support for the order is found in Tex. Fam. Code Ann. § 105.001.

7. Best Interest of the Child

The “best interest of the child” is always the primary consideration in determining questions of managing conservatorship, possession, and support of and access to a child. *Tex. Fam. Code* § 153.002 [conservatorship]; § 153.252 [possession and access]; and § 154.122 [support]; *Davis v. Davis*, 794 S.W.2d 930 (Tex. App.--Dallas 1990, no writ). It has been stated that the best interest of the child is the backbone of American Family Law, when custody is an issue. *Yavapai-Apache Tribe v. Mejia*, 906 S.W.2d 152 (Tex. App.--Houston [14th Dist.] 1995, mand. motion overr.). Additionally, the best interest of the child, and not rules of pleading and practice, are the primary concern in child custody and support cases. *Cohen v. Sims*, 830 S.W.2d 285 (Tex. App.--Houston [14th Dist.] 1992, writ denied). In determining child custody cases, the technical rules of pleading and practice need not be strictly followed: it is the best interests of the child that are paramount. *D ___ F ___ v. State*, 525 S.W.2d 933 (Tex. App.--Houston [1st Dist.] 1975, writ ref'd n.r.e.).

8. Totality of The Circumstances

Just as the best interest of the child shall always be the primary consideration of the court in determining questions of managing conservatorship, possession of, and access to a child, the court must give deliberate thought to and weigh all the facts and circumstances that bear directly or indirectly on a child, including, but not limited to, present or future physical, mental, emotional, educational, social, disciplinary and moral welfare, well-being, stability, and developmental needs. *Fair v. Davis*, 787 S.W.2d 422 (Tex. App.--Dallas 1990, no writ).

In determining the best interest of the child, the court must consider the circumstances of the parents. In a divorce suit, the trial court's findings of fact as to the mother's and father's emotional stability, the father's good moral character and mother's lack thereof, and the advantages of a superior home environment the child would obtain if the court granted the father custody supported the court's ultimate conclusion that it was in the child's best interest for the father to have custody. *Glass v. O'Hearn*, 553 S.W.2d 15 (Tex. Civ. App.--Fort Worth 1977, no writ). It is proper for the court to consider the influences the child may be subjected to and how the environment will affect the child's education and moral training and not just the question of food and clothing alone. *Sarosdy v. Sarosdy*, 297 S.W.2d 852 (Tex. Civ. App.--Dallas 1957, no writ).

Some factors to consider in determining the best interest of the child are:

1. the emotional and physical needs of the child now and in the future,
2. any emotional and physical danger to the child now and in the future,
3. the parenting ability of the individuals seeking custody,
4. the stability of the home or proposed placement,
5. the acts or omissions of the parent that may indicate that the existing parent-child relationship is not a proper one, and
6. any excuse for the acts or omissions of the parent.

Holly v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976).

9. **Role of the Ad Litem**

Tex. Fam. Code Ann. § 107.014 mandates that a court appointed attorney ad litem shall investigate to the extent the attorney ad litem considers appropriate to determine the facts of the case.

10. **Child Abuse**

Tex. Fam. Code Ann. § 261.001(1) (A) &(B) defines [child] abuse to include the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning.

Tex. Fam. Code Ann. § 104.006 provides as follows:

In a suit affecting the parent-child relationship, a statement made by a child 12 years of age or younger that describes alleged abuse against the child, without regard to whether the statement is otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside of the presence of the jury, the court finds that the time, content, and circumstances of the state provide sufficient indications of the statement's reliability and:

- (1) the child testifies or is available to testify at the proceeding in court or in any other manner provided for by law; or

(2) the court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child.

11. **Audio Taping of Children's Telephone Conversations With Parent**

As long as a parent has the good faith belief that recording is in the child's best interest, the parent may vicariously consent on behalf of the child to the recording of the child's cell phone conversations. *Pollock v. Pollock*, 154 F.3d 601 (6th Cir. 1998). The custodial parent's good faith concerns for his minor child's best interest may, without liability under the Federal Wiretapping Statute, empower the parent to intercept the child's conversations with her non-custodial parent. *Campbell v. Price*, 2 F. Supp. 2d 1186 (E.D. Ark. 1998).

There may be limited instances where a parent may give vicarious consent on behalf of a minor child to the taping of telephone conversations where that parent has a good faith, objectively reasonable basis for believing that the minor child is being abused, threatened, or intimidated by the other parent. *Silas v. Silas*, 687 So. 2d 368 (Ala. App. 1996). As long as the guardian of the child has a good faith, objectively reasonable belief that the interception of telephone conversations is necessary for the best interest of the children, the guardian of the child may vicariously consent to the interception on behalf of the children. *Wagner v. Wagner*, 64 F. Supp. 2d 895 (U.S.D.C. Minn. 1999).

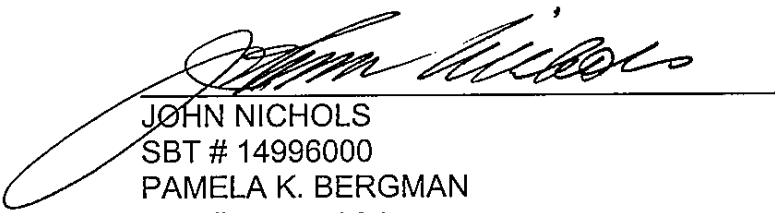
12. **Parental Alienation Syndrome**

Parental Alienation Syndrome refers to a pattern of behavior that arises almost exclusively out of child custody disputes. It is a disorder in which children, programmed by the allegedly loved parent, embark upon a campaign of denigration of the allegedly hated parent.

1. Alienating behaviors may arise when one parent becomes irrationally angry, feels shamed or fears loneliness. Looking at parental alienation from this broader perspective may allow for more accurate detection as well as more reliable findings.
2. A parent of questionable mental health might suffer profound damage to their self-esteem after a marital breakup and try to feel better by denigrating the other parent to the child. Some parents may engage in alienating behaviors to deflect attention from themselves, hoping their own personal imitations will not be discovered. The personality makeup of some parents is such that revenge seems like the only viable option in response to the feeling wounded by the divorce.

Respectfully submitted,

LAW OFFICE OF JOHN NICHOLS

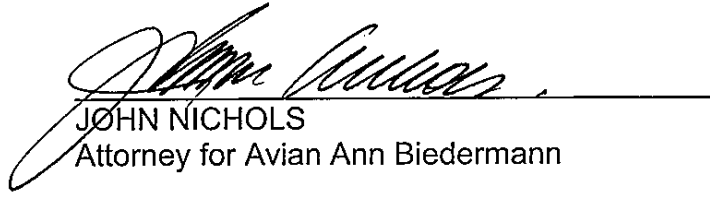


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Certificate of Service

I certify that a true copy of the above was served on each attorney or party in accordance with the Texas Rules of Civil Procedure on this the 23 day of September, 2001.



JOHN NICHOLS
Attorney for Avian Ann Biedermann

Exhibit A

At 9:50 O'clock *A M*

CAUSE NO. 9284

Barbara Meyer
AUG 20 2001
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

IN THE MATTER OF)
THE MARRIAGE OF)
)
AVIAN ANNE BIEDERMANN)
AND)
KENNETH KYLE BIEDERMANN)
)
AND IN THE INTERESTS OF)
KYL A RAE BIEDERMANN,)
EMILY LAINE BIEDERMANN,)
LOREN NOEL BIEDERMANN AND)
DANA TRUE BIEDERMANN,)
MINOR CHILDREN)

IN THE DISTRICT COURT OF
GILLESPIE COUNTY, TEXAS
216TH JUDICIAL DISTRICT

EMERGENCY SUI SPONTE ORDER

On this the 20th day of August, 2001, the Court has heretofore ascertained and learned from two credible professionals that the original Respondent, KENNETH KYLE BIEDERMAN, in the above numbered and styled cause, being the natural Father of the four (4) minor children involved in this matter, has and continues to ignore, violate and disregard the Court's Orders, admonishments and instructions with reckless abandonment, impunity, knowingly, purposely and malevolently to the great harm, detriment, emotional stability, *abuse* and above said minors by:

- (1) His sleeping arrangement with said minors; and,
- (2) degrading the minors' mother in their presence.


THEREFORE, the Court does make and enter the following Orders which are effective immediately for the protection of said minors and for their best interest.

- (1) The original Petitioner, AVIAN ANN BIEDERMAN, the natural mother, shall be the sole temporary managing Conservator of the four minor children with all the power, authority, duties, etc., as provided by law.

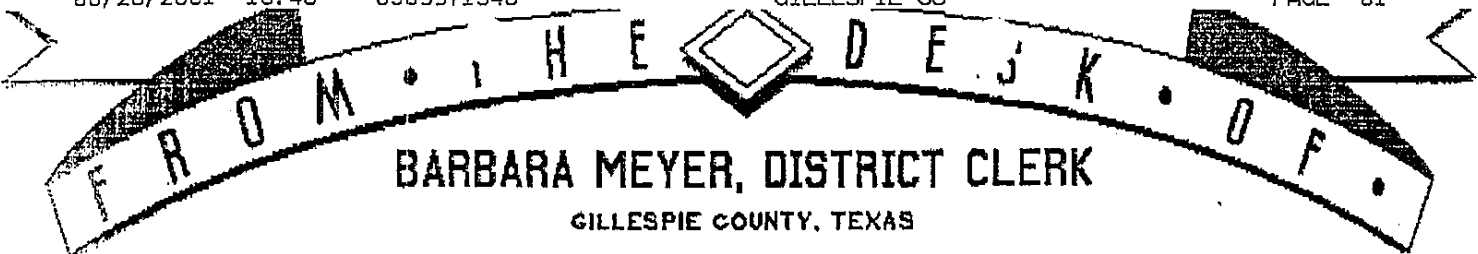
- (2) Until further Orders of this Court, the natural Father, KENNETH KYLE BIEDERMANN, the original Petitioner, shall have no contact or communication, ^{WITH SAID MINORS ②} in any manner, way, form or fashion, until further Orders of this Court. Moreover, said Father shall not go, for any reason, within one hundred (100) yards of the original Petitioner's residence and/or where a reasonable person would anticipate said minors being at such time, including schools, churches, etc.
- (3) Any and all Orders and agreements heretofore made in this case, not in conflict with this Order, ^{that is} or do not violate the intent or spirit of this Order, shall remain in full force and effect.
- (4) The Father shall not contact and/or attempt to contact, in any manner, the Mother, except by or through his attorney, the attorney ad litem in this cause, Dr. Jack Ferrell or such party the said Dr. Jack Ferrell shall designate in writing.
- (5) The Father shall present to the Court within ten (10) days from the date hereof in writing and sworn to:
- (a) Why his parental rights should not be summarily terminated;
 - (b) why all of his pleadings should not be struck;
 - (c) why all of the fees of the attorney ad litem should not be paid by him;
 - (d) why all costs of Court should not be assessed against him;
 - (e) why all costs of the Plaintiff's attorney's fees should not be assessed against him;
 - (f) why it should not be determined that he is in contempt of Court, be fined and/or incarcerated in the Gillespie County Jail; or
 - (g) that the information furnished to the Court is untrue and/or not accurate.

All matters herein are subject to revisions, modifications and others by this Court.

Signed this the 20th day of August, 2001.


CHARLES SHERRILL
Senior Judge

Copy Faxed To (per Judge Sherrill)
Atty John Nichols & Atty Pamela K. Bergman
Atty Allen (Jody) Halm
Atty Kurt Rudkirk
Dr. Jack G. Ferrell, Jr.
8-20-01 *JSM*



BARBARA MEYER, DISTRICT CLERK
 GILLESPIE COUNTY, TEXAS

August 20, 2001

Re Fax For: Atty John Nichols
 & Atty Pamela Bergman

713-654-0706

Ref: 9284

Biedermann Divorce

Fax Contains 4 pages
 including cover.

Barbara Meyer, District Clerk

BARBARA MEYER, DISTRICT CLERK

GILLESPIE COUNTY, TEXAS
 101 WEST MAIN STREET, ROOM #204
 FREDERICKSBURG, TEXAS 78624

713-997-6517
 830



Exhibit B

Biedermann Audio Tape Transcript Excerpts

1. Audio Taped Transcript of May 24-25, 2001:

KYLE BIEDERMANN : I'm glad you called. I didn't know if you were gonna call or not. What are you guys doing?

KYLA: Um, Mamma's (inaudible) to get ready for bed.

KYLE BIEDERMANN : What's that.

KYLA: Momma's telling us to get ready for bed.

KYLE BIEDERMANN : Oh, really?

KYLA: Uh-huh.

KYLE BIEDERMANN : I came by earlier, but all you girls were inside.

KYLA: We were?

KYLE BIEDERMANN : All you girls were in the house. I drove by and saw Mommy outside.

KYLA: What?

KYLE BIEDERMANN : I drove by, but only Mommy was outside.

KYLA: Yeah.

KYLE BIEDERMANN : What were you guys doing?

KYLA: Watching TV.

2. Audio Taped Transcript of May 24-25, 2001:

KYLE BIEDERMANN : Well, they just said I should be allowed to talk to you girls. That's what, um, the court says. And, Mommy wouldn't let me talk to you girls last night.

EMILY: Why?

KYLE BIEDERMANN : I don't know. You'll have to ask Mommy that.

EMILY: Well, Daddy, Loren and Kyla were crying about you, 'cause they

thought the police took you to jail.

KYLE BIEDERMANN : No, no. Not at all. They, uh, you know, they, uh, I just came, I, you know, just waited for them to come, so they would know that Mommy's not letting me talk to you girls.

EMILY: (inaudible)

KYLE BIEDERMANN : (inaudible) that, you know, I'm allowed to talk to you girls, and Momma wouldn't let me. So, I came over to see you. Now, where were you, Emmy?

EMILY: Um, I'm at home, on the couch.

KYLE BIEDERMANN : No, when, where were you, last night?

EMILY: Oh, why?

KYLE BIEDERMANN : Oh, well, just, did you look out the window? Did you see anything?

EMILY: Well, um, we thought that, um, we thought that you, uh, got arrested.

KYLE BIEDERMANN : No, no. I didn't do anything wrong.

KYLE BIEDERMANN : Dana True, you hang up right now. Dana True, if you don't hang up, you will be in trouble when I see you. Do you understand me? One at a time—

DANA TRUE: (inaudible) go on a trip.

KYLE BIEDERMANN : —hang up; hang up the phone, Dana True, now.

DANA TRUE: (inaudible) go with Mommy, right?

KYLE BIEDERMANN : Well, we'll see. But, you're gonna get in trouble if you don't hang up the phone—

DANA TRUE: For what? What happened?

KYLE BIEDERMANN : Dana True, if you do what I told you—

DANA TRUE: But, what happened?

KYLE BIEDERMANN : Dana True, I'm gonna spank you so hard, and

you're not gonna get to do some things this weekend, if you don't hang up the phone right now. You'll get your turn.

3. **Audio Taped Transcript of May 24-25, 2001:**

KYLE BIEDERMANN : Dana True, get off the phone. Between us, Kyla, Mommy went ahead and just got you all involved, and got you girls all upset about calling the cops. But, there's no reason to do that. And, she was in the wrong. Now, I'm not allowed to come to the house. But, I know I was wrong, too. But, I'm gonna come there, 'cause I want to see you girls, and I'm supposed to be able to. It was wrong for Mommy not, not to let me talk to you girls. Do you understand?

KYLA: Uh-huh.

KYLE BIEDERMANN : That's the whole, if she doesn't want, if she wants to protect you girls from this, and keep you, you know, keep, you know, not have you affected by it, right?

KYLA: Yes.

KYLE BIEDERMANN : And, uh, I, I would think that calling the police so quickly, like that, really gets you involved, doesn't it?

KYLA: Uh-huh.

4. **Audio Taped Transcript, undated, 2001:**

NICK: Oh. You just got done talking to your dad.

LOREN: No, you're not Daddy. No, this is not Daddy.

NICK: It's Nick the bomb.

LOREN: Yeah. What else did you do on your vacation? What else did you do on your vacation?

NICK: Um, got a lot of clothes, and got a lot of stuff.

LOREN: Oh. That's what my mom does. She wastes her money.

5. **Audio Taped Transcript, undated, 2001:**

KYLE BIEDERMANN : Is this Loren?

LOREN: Yes.

KYLE BIEDERMANN : Loren. I've been waiting for your call. Thank you for calling, Loren.

LOREN: Momma wouldn't let us.

KYLE BIEDERMANN BIEDERMANN : Well, where are you?

LOREN: Home.

KYLE BIEDERMANN : You're in Fredericksburg?

LOREN: Yes.

KYLE BIEDERMANN : Oh, my Loren. Does Mommy know you're calling me?

LOREN: No.

KYLE BIEDERMANN : Oh, Loren. Oh, Loren, you make Daddy so happy. Do you know that?

LOREN: Yes.

KYLE BIEDERMANN : I love you so much, Loren. Thank you for calling. Where are you? In, in the house?

LOREN: I'm in Momma's bedroom.

KYLE BIEDERMANN : And, where's Mommy?

LOREN: Outside, talking to John.

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DANA TRUE: Could you come by?

KYLE BIEDERMANN : Well, I can't come by. I would, right now, if I could, Dana True.

DANA TRUE: Why?

KYLE BIEDERMANN : Well, Mommy won't let me come by.

DANA TRUE: Momma's not here.

KYLE BIEDERMANN : Where is she?

DANA TRUE: I don't know.

KYLE BIEDERMANN : Well, she's probably outside or across the street. Dana True, I'm so happy to hear your voice. I miss you so much.

DANA TRUE: Well, why won't you just drive over here?

KYLE BIEDERMANN : Well, last time I came over, she called the police on me, Dana True.

DANA TRUE: Oh, Daddy.

KYLE BIEDERMANN : You don't think she'd do that again?

DANA TRUE: No. She won't do that. She's not here.

KYLE BIEDERMANN : She's across the street, or she's outside, Dana True. She doesn't leave you alone at the house.

6. **Audio Taped Transcript May 24-25, 2001:**

KYLE BIEDERMANN : You have reached 997-8385. Please leave a message after you hear the beep.

KYLA: Hi, Daddy. This is Kyla. Um, I got the information, as you know. It, um, the rodeo's changed. Mom has to call the people, and see what time. And, it costs money, so bring money. At least more than 15 dollars, I think. I don't know, but, it's gonna cost us 20 dollars to get in. That's all I know. Um, so, um, and, it's gonna be a rodeo. And, and, when I get the time, I'll call you. Um, Daddy, we can leave Wednesday instead of Thursday, if that's okay with you. We can leave Wednesday. Because, Ms. Klein said there's nothing happening on Thursday. All they're doing is cleaning. So, she said she would have someone clean my desk for me. Um, she said we could leave Wednesday, like I said. Um, and if you want to stay for Thursday, that's fine. Um, but I really wouldn't want to. Um, you can either leave Wednesday or Thursday. That's what I know, right now. Okay? Bye.

(Phone disconnects)

7. **Audio Taped Transcript May 24-25, 2001:**

KYLE BIEDERMANN : I told you to call me back, and you didn't, right?

KYLA: Yes, I got the information. I went and asked Tara for the information—Dana True. I went and asked for the information, and,

Mommy asked me why. And, I said, I called, I said, because Daddy wants to know. And, I called him, and he said, get the information and call him back. She said, no. Go to bed.

KYLE BIEDERMANN : Well, I didn't get a chance to talk to your sisters, did I?

KYLA: No.

KYLE BIEDERMANN : See. I get to talk to all of you every night. So, did you think the police took me in to jail?

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KYLE BIEDERMANN : I need to get to talk to you girls every day.

KYLA: Did Momma get in trouble?

KYLE BIEDERMANN : Well, I don't know. We'll have to ask her. It also says, if you go out of Gillespie County, (inaudible) she's got to let me know when she takes you. And, that, that's why she wouldn't let me (inaudible)—

KYLA: Dana True.

KYLE BIEDERMANN : —and so, she wouldn't tell me that, either. That's against the court order, also.

KYLA: Can you come with us?

KYLE BIEDERMANN : Kyla, it's not a good thing for me to be— I mean, I would love to go with you girls. But, Mommy doesn't want me to be there, and you know that.

KYLA: That doesn't matter. I want you to watch us do the bull, chase the calves and stuff.

8. **Audio Taped Transcript July 2001:**

AVIAN BIEDERMANN : If they're not going to Fiesta, Texas tomorrow, they need to come home.

KYLE BIEDERMANN : Okay. How about you take them to Grandma and Pappa's to spend the day.

AVIAN BIEDERMANN : I don't know. Why don't you (inaudible) think

about it?

KYLE BIEDERMANN : How about Wednesday? How about Thursday? Do I have to go to court, in a hearing, just to see the kids more? Instead of you lying about me not wanting the kids?

AVIAN BIEDERMANN : I didn't lie.

KYLE BIEDERMANN : Yeah. You guys lied, telling them that we didn't want to see the kids any more. I (audible) one day a week. That's not the case.

AVIAN BIEDERMANN : You're the one that came up with that.

KYLE BIEDERMANN : I want it just for 30 days. That was what that was for. 30 days, and you—

AVIAN BIEDERMANN : You're, hey, I didn't like, you're the one that came up with the plan.

KYLE BIEDERMANN : Okay. I'm going to court to get the kids more often. Do I have to go to court, or would you just let me see the children more often? Yes or no?

AVIAN BIEDERMANN : I already said, if you want to take the children to Fiesta, Texas tomorrow, that's fine.

KYLE BIEDERMANN : Okay. I'm going to court. You already know that. We're already going to court, just so I can see the kids, 'cause you're a fucking asshole.

AVIAN BIEDERMANN : I'm a what?

KYLE BIEDERMANN : You heard me. You won't even let me see the girls.

AVIAN BIEDERMANN : That is not true.

AVIAN BIEDERMANN : Discuss it with my lawyers.

KYLE BIEDERMANN : Oh, it's for your lawyers' kids? Oh, my goodness. I didn't know that they were the lawyers' kids. Oh, gosh. I'm glad that they care more about your children than you do. I'm glad to hear that. We're going to court, so I can see the kids more. And, that's because you're making me. 'Cause, you don't care about the kids. All you want to do is hurt me. You're not gonna hurt me very long. And, the truth be know, we

have to go to court, just so I can see them. The kids know that. You don't have to hide it from them. You can't hide it from them.

AVIAN BIEDERMANN : Give me a hug.

EMILY: My tummy hurts.

AVIAN BIEDERMANN : your tummy hurts? Come here. I'll give you something for it. Bye, I love you.

KYLA: Bye.

AVIAN BIEDERMANN : Try not to get your ears wet.

(End of tape)

9. **Audio Taped Transcript of July 6, 2001:**

KYLE BIEDERMANN : Uh-huh. Well, I mean, have you been home? I've called twice.

KYLA: Yeah.

KYLE BIEDERMANN : (inaudible)

KYLA: It did.

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KYLA: Um, yeah. Um, hold just a minute. I need to tell Momma something. Momma, Momma? I need to go to the bathroom. Okay. Momma doesn't like, Momma doesn't know that, you know, when I talked to you, when you were (inaudible)?

KYLE BIEDERMANN : Uh-huh.

KYLA: Yeah? Well, um, Tara was down there. When she was about to come upstairs, but she heard me talking to you about the thing. She had heard me talking to you, and telling you what I was telling you, and she got pretty mad. And, and she got (inaudible), too. And, um, so, she sent one of my sisters up to come get me, um, to open up presents and cake.

KYLE BIEDERMANN : Uh-huh.

KYLA: Yeah? Um, well, Momma made up a new rule that we cannot go, um, out of the room where a grown-up is in.

10. **Audio Taped Transcript of August 3, 2001:**

EMILY: You glad I remembered to call you back?

KYLE BIEDERMANN : Yes, I am. Very, very much. Very, very, very much. You know, 'cause I, see, I didn't talk to you girls for a couple of days, and I kept calling, calling, calling. And, I never got a call back.

EMILY: You kept doing what?

KYLE BIEDERMANN : I kept calling you girls and leaving messages. And, I never got a call back. So, I didn't know what was going on.

EMILY: Well, Momma says that we can't answer the phone, without her permission.

KYLE BIEDERMANN : Well—

EMILY: She says that if we do, she's gonna spank us (inaudible).

KYLE BIEDERMANN : Oh, that's not right, Emmy. Oh, Emmy. You girls are big enough. You don't need to get spanked.

EMILY: No, that's what we get all the time. Every single day.

KYLE BIEDERMANN : Well, what if somebody asked you questions about that? What would you say? What if the, what if the court asked you something? What would you say?

EMILY: Um, a question?

KYLE BIEDERMANN : Yeah. What if they ask you if you still, if you got (inaudible), what would you say?

EMILY: I would say that Momma switch, spank us every day.

KYLE BIEDERMANN : And, what would they spank you for?

EMILY: What?

KYLE: What would they spank you for?

EMILY: Calling on the phone without permission, when you say that we can, you know.

11. **Audio Taped Transcript of August 3, 2001:**

KYLE: Yeah, wait 'til you see it. It's really good. I just thought I'd get you today, and then we could, you know, then you could be at Ace with me, tomorrow, to help me do the garage sale. I, there's no reason for you not to be able to come over here, except that Mommy doesn't want you to see me. That's it. Well, we just have to wait, huh, precious?

KYLA: Dad, you know what?

KYLE: What?

KYLA: Momma's watching movies for child discipline.

KYLE BIEDERMANN : Oh, gosh. I guess she needs to learn something. She's just spanking you girls for—

KYLA: Nothing.

KYLE BIEDERMANN : —for no reason. And, that's not good, is it?

KYLA: Uh-huh. I think the child discipline is telling her that.

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KYLE BIEDERMANN : Well, why don't you bring the video with you? Okay? Put it in your bag. And, I'll watch it and see what I think.

KYLA: Okay. 'Cause, we don't know. We just know she's watching it, when we are not around.

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KYLE BIEDERMANN : Well, I mean, that's, the Bible says that, you know. I don't know. The problem is that you girls shouldn't be spanked when Mommy (inaudible), like not letting you come to the phone.

KYLA: Uh-huh.

KYLE BIEDERMANN : Or, when you come, not letting you see your dad.

KYLA: Uh-huh.

KYLE BIEDERMANN : That's bad.

KYLA: Well.

KYLE BIEDERMANN : Oh, my precious.

LOREN: I want to talk to Daddy.

KYLE BIEDERMANN : Well, no matter what, Kyla, I'm gonna see you Sunday morning. Okay?

12. **Audio Taped Transcript of August 3, 2001:**

KYLE BIEDERMANN : Hi, precious. How'd you know it was me.

KYLA: 'Cause the phone says who it is.

KYLE BIEDERMANN : Oh, it does?

KYLA: Yeah.

KYLE BIEDERMANN : That's why Mommy doesn't answer 'cause she knows it me.

KYLA: Yeah.

KYLE BIEDERMANN : How are you girls going? I haven't talked to you for a couple of days.

KYLA: Fine.

KYLE BIEDERMANN : What did you girls do yesterday?

KYLA: We went swimming.

KYLE BIEDERMANN : Where'd you go.

KYLA: (indiscernible) Johnson's.

KYLE BIEDERMANN : Uh-huh.

KYLA: But we went really late.

KYLE BIEDERMANN : What do you mean?

KYLA: We went really late and Mom's was being mean. I asked her if we could come by grandma and papa's and get the goggles. And she said, we're not making any stops. And so Loren put the top of her bathing suit in the clothes that we gave you. And Mamma spanked me for giving the clothes to you.

KYLE BIEDERMANN : Uh-huh. Oh God. You could have come and gotten

them. They're in my truck.

KYLA: I know.

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KYLE BIEDERMANN : I'll take you to the bus.

KYLA: You will?

KYLE BIEDERMANN : Yes.

KYLA: Mamma said we weren't going to get to see you.

KYLE BIEDERMANN : That's not the truth. I'll pick you all up at eight o'clock in the morning, and I'll take you to the bus.

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KYLE BIEDERMANN : Now, can you believe that Mommy wasn't going to let me see you girls at all this weekend. It's my weekend. Did you know is my weekend to see you girls. Now, I'm not going to see you at all.

Why would she do that Kyla?

KYLA: Well, Daddy, I wanted choir.

KYLE BIEDERMANN : I know, I'm glad you got choir.

But why can't I see you tonight or tomorrow? Or tomorrow?

KYLA: Tonight and tomorrow? Or today?

KYLE BIEDERMANN : Yes. You know, if she's going to take me days, then why can't she give me another day?

KYLA: Why is she taking it? How could she do that? Why can't you?

KYLE BIEDERMANN : Because her attorneys are ... They don't care about you girls. They just want to hurt me. That's it. They're good at it. They don't care one bit about what you girls want. They are trying to keep you away from me.

KYLA: We won't let them.

KYLE BIEDERMANN : And they're doing everything they can to do that, Kyla.

KYLA: Well, how come they say that they love us?

KYLE BIEDERMANN : Well, what do you think?

Call and see ... You call and say, hey listen, if you love me so much, let me see my daddy for a day. What do you think they'll say?

KYLA: I don't know – They'll laugh at me.

KYLE BIEDERMANN : Okay.

KYLA: And then they'll say, huh, well, that's the court's decision.

KYLE BIEDERMANN : It's not the court's decision.

KYLA: Mommy says it is.

KYLE BIEDERMANN : Yeah, well, she's just telling you a lie, Kyla.

It's up to Mommy, completely. Nobody tells her that she can't let – She has control of you girls when she has you, and she can do whatever she wants. She can let me have you. She can let you go with me if she wants. It's all up to her. The court doesn't tell her that she can't. All right.

When it was Mother's Day. Remember when it was Mother's Day.

KYLA: Mother's Day.

KYLE BIEDERMANN : Mother's Day, was Sunday. That was my day. I let you go with Mommy, didn't I.

KYLA: Why?

KYLE BIEDERMANN : Because that was the right thing to do.

The court said it was my day. But does that mean that I can't let Mommy have you? Of course not. It's up to me. It's my day, and if I want to let you go with Mommy, I can let you go with Mommy.

Mommy has given you to me one other day. We went someplace and she gave me – she let you come early, right? A few times.

KYLA: Yes.

KYLE BIEDERMANN : She decided to let me come early.

KYLA: Yeah.

KYLE BIEDERMANN : The court says at five o'clock I can pick you up. But Mommy let you go early. Why? Because it's up to Mommy. The court doesn't tell her you can't do that. The court didn't tell me I can't let you girls go with Mommy on Mother's Day. But I let you go. 'Cause that's the right thing to do. The court will never tell us you can't do anything.

KYLA: Mommy has gotten worse.

KYLE BIEDERMANN : I know she has, Kyla. I'm just gonna – You know. I'm sorry that you that you girls have to go through this. I'm just sorry you have to go through it.

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KYLA: Mamma, daddy wants to talk to you.

AVIAN BIEDERMANN : Yes.

KYLE BIEDERMANN : Avian, I don't want any arguments or complaints, but you get the girls through the fourth, which is Saturday and I get them on the 5th.

AVIAN BIEDERMANN : No, you only get two of them on the 5th.

KYLE BIEDERMANN : I'm picking all up at eight o'clock in the morning. I talked to my attorney. And I'll have the police there if you don't give them to me. You call your attorney if you want to change. Okay, let me talk to the girls. All four at eight o'clock in the morning.

13. **Audio Taped Transcript of August 3, 2001:**

EMILY: That's not fair, everybody else has dads.

KYLE BIEDERMANN : Well, you tell Mommy. She's the one keeping you away from me, Emmy. There's nothing I can do about it. It's her and her attorneys. They don't want you to see me. They won't let me pick you up at eight o'clock in the morning on Sunday, did you know that?

EMILY: Why?

KYLE BIEDERMANN : Because they don't want me to see you

Mommy just told me she won't let you come at eight o'clock in the

morning. She said, I can't see you and Kyla at all. I said, uh-huh, I'm going to pick them up at eight o'clock in the morning. So don't let her trick you Emmy. I'm picking you up at eight o'clock in the morning, no matter what. If not, I don't get to see you at all. And for some reason, I don't know why, Emmy, they don't want you to see me.

EMILY: Well, why don't you then tell the court?

KYLE BIEDERMANN : I did tell the court, but I can't do anything about it. They played some mean tricks, Emmy.

EMILY They're not going to do anything about it?

KYLE BIEDERMANN : I can't do anything about it.

EMILY: No, the court.

KYLE BIEDERMANN : You just have to ask Mommy why. You ask Mommy why. She won't tell you. But the bottom line is, they didn't want you to see me, and so they tricked the court and made it out so that – made sure that I wasn't going to get a chance to see you.

EMILY: That's not fair.

KYLE BIEDERMANN : I know. I'm sorry, Emmy. But I'll see you Sunday morning, Okay?

EMILY: Everyone else gets to see their dad almost every day.

KYLE BIEDERMANN : Well, tell Mommy that. Ask her if maybe I can take you out for ice cream or something. Okay?

EMILY: Okay.

KYLE BIEDERMANN : Okay. All right.

EMILY: Okay.

KYLE BIEDERMANN : Okay. Well, Emmy, I got to go.

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KYLA: I want you to call.

KYLE BIEDERMANN : Well, I'll be happy to do anything Kyla. Just remember, I'll pick you up at eight o'clock in the morning, and don't let

Mommy fool you that I'm not.

KYLA: Why is she always trying to lie to us that we're not.

KYLE BIEDERMANN : 'Cause –

14. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : But, you can also tell Mommy, Mommy, please don't spank Loren. And, uh, if she does, you can call your attorney.

EMILY: Attorney?

KYLE BIEDERMANN : You can call the, the, there's a, that man, Kurt Rudkin, that we sat around the room and talked to, that one day at Grandma and Pappa's.

EMILY: Yes, but we don't know his phone number.

KYLE BIEDERMANN : I'll give you the phone number, if you want to call. But, you can tell Mommy, if you spank, that, you know, tell that you'll call your attorney, if you have to. Okay? I don't want you to get in trouble Emmy. I'm sorry. Oh boy. I just love you girls. I know God's gonna take care of you girls, no matter what, Emmy.

EMILY: Okay.

KYLE BIEDERMANN : God's watching every second.

EMILY: If I find Momma, before she spanks Loren, I'll tell her that you wanted to talk to her.

KYLE BIEDERMANN : Yeah.

EMILY: And to call her.

KYLE BIEDERMANN : That's right.

EMILY: But, if it doesn't work?

KYLE BIEDERMANN : Then, say, then, then you're gonna, then Daddy's gonna call the attorney.

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KYLE BIEDERMANN : Okay. Lord Jesus, we just thank you that you love

Kyla and Emmy and Loren and Dana True so much, and that you've promised to protect them in every way, Lord. And, we just pray that, that they will in no way have any anger or bitterness toward Mommy, even though Mommy may not be being nice to them—

EMILY: Well, I'll tell her, that, uh, that you're gonna call your attorney—

KYLE BIEDERMANN : Uh-huh.

15. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : Oh, girls I am so sorry. Oh, girls, I just can't believe this. Do you remember anything else that you talked to the guy about, yesterday, precious?

KYLA: Uh, no, not really.

KYLE BIEDERMANN : Did he ask you anything about, um, watching movies that were, you know, about, um, babies being born?

KYLA: Yes. He asked me that question, um, uh, asked me, did you ever watch a movie of a baby being born, with one of your parents? And, I said, um, yes, but it wasn't with my parents. It was with Heather, I said, my cousin.

KYLE BIEDERMANN : Uh-huh.

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KYLE BIEDERMANN : Yeah. Anything else, Kyla, that he asked for?

KYLA: No, except for the potty stuff, you know. And, I told him about that.

KYLE BIEDERMANN : About, the only thing you knew about was the kitten?

KYLA: Yeah. I said the kitten peeing on me, uh, because it was me, it was my fault. But, um, and then, my other cat, um, peeing on my sleeping bag.

KYLE BIEDERMANN : Was he trying to ask if it, did he think it was me that peed on you?

KYLA: Well, actually, um, I don't know what, I told him about the cats. And then, I told him the one time, one morning, I told him that, when you were, you used to live with us, we used to all get up in the morning. We used to all come on you and Momma's bed, and when we did, um, Loren came, and she got sick. And, she threw up.

KYLE BIEDERMANN : Uh-huh.

KYLA: Sort of on you. I told him that.

KYLE BIEDERMANN : Yeah. Okay, precious. All right, precious. Well, what kind of doughnuts do you want?

KYLA: Um, let me see. Uh, do they still have tiger tails?

KYLE BIEDERMANN : Yeah. Want a tiger tail?

KYLA: I guess.

KYLE BIEDERMANN : Okay.

KYLA: And, if they don't, um, I, I don't know what I want.

KYLE BIEDERMANN : Well, don't let Mommy know I'm coming.

KYLA: Okay.

KYLE BIEDERMANN : And then, you guys just look out the window. It's gonna take me about 15 minutes to get them. Okay?

KYLA: Okay.

16. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : Hi.

KYLA: Um, you know, right after I called you, I went to the beauty shop. I sat down, and the phone rang, and it was you.

KYLE BIEDERMANN : Oh, good, Kyla.

KYLA: 'Cause, you got right back, right, you got back right after I called you.

KYLE BIEDERMANN : Well, good.

KYLA: Did she, did, um—

KYLE BIEDERMANN : Linda told me you called.

KYLA: Yeah?

KYLE BIEDERMANN : I just wanted to make sure I got you. I didn't think I'd get you on the phone. So, is Mommy taping these phone calls?

KYLA: How am I supposed to know? I think so.

KYLE BIEDERMANN : Well, you know, is there a record button, or some kind of beeping thing on the phone, that you have to (inaudible)—

KYLA: I don't know.

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KYLA: Okay, Daddy? I think I told the guy about, um, what Momma and, I know I told the guy that, um, that, about the, them telling us it's our fault that ya'll have arguments. And, I told him that me and Laura think, feel like, um, uh, we, it's our fault that the divorce came up.

KYLE BIEDERMANN : Uh-huh. But, that they're making you feel that way?

KYLA: Yeah.

KYLE BIEDERMANN : Okay.

KYLA: I told them all the bad things about Momma, and I told them (inaudible).

17. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : Next summer. A whole school year, when you're off for the summer, again, and you're—What's the little beeping noise?

DANA TRUE: I don't know.

KYLE BIEDERMANN : That must be the, that must be the tape. They're probably taping our conversations, girls.

DANA TRUE: What?

KYLE BIEDERMANN : Who's on the phone, right now?

DANA TRUE: Me.

KYLE BIEDERMANN : Just you?

DANA TRUE: Yes.

KYLA: And me, and Kyla.

KYLE BIEDERMANN : You hear that little beeping noise? The beep-beep?

KYLA: Yes.

KYLE BIEDERMANN : That must be the, that they're taping it.

* * * * *

KYLA: —she told us that, um, she told us that Daddy shouldn't be coming by, 'cause it makes, 'cause we know it makes trouble. And, she said, I don't come by and see you, when, um, when you're with Daddy. And, I said, yeah, that's because you don't love us that much.

KYLE BIEDERMANN : Oh. Oh, my precious. Well, that's because she sees you, all the time. I don't get to see you. And, that's because I want to see you, and she really doesn't need to, 'cause she sees you all the time.

KYLA: Well, that's what I told her, because she doesn't love us.

KYLE BIEDERMANN : Yeah. And, what'd she say?

KYLA: She said, no that is not true.

KYLE BIEDERMANN : Yeah, well. See, Kyla, you understand what's going on. That's what's so good, Kyla. You can see right through all that garbage. You can see right through it. And, uh, and, if you girls want to see me, that's what's important. That's what you girls want, not what she wants. Right?

KYLA: Uh-huh.

KYLE BIEDERMANN : Well, I appreciate you girls very much. I appreciate it very much. All right, girls, why don't you try to give me a call a little bit later, Okay?

KYLA: Okay.

18. **Audio Taped Transcript of August 16, 2001:**

KYLA: It was good. Where did you go?

KYLE BIEDERMANN : Huh? (inaudible)

KYLA: (inaudible) And, that's it?

KYLE BIEDERMANN : That's it.

KYLA: (inaudible) Why? We still haven't convinced them yet? (inaudible)

KYLE BIEDERMANN : I've got (inaudible)

KYLA: Why haven't we? We've told them everything that Momma does wrong. There's so many things bad. And, everything you do right. And, we still haven't convinced them?

KYLE BIEDERMANN : Not yet, Kyla.

KYLA: Why? What more do they need?

* * * * *

KYLA: On Monday, and then Momma gets us again? Why? I feel—

KYLE BIEDERMANN : Well, it's gonna be like this for a while. I'm sorry.

KYLA: Have we come to a point where I can go down to pharmacy and call you?

KYLE BIEDERMANN : I don't thing (inaudible)

KYLA: Why?

KYLE BIEDERMANN : Kyla, I can't talk about this (inaudible), okay?

KYLA: Why?

KYLE BIEDERMANN : I just can't.

KYLA: What's wrong? Do they know that you're thinking it?

KYLE BIEDERMANN : Well, no. But, they tape everything you say, Kyla. So (inaudible)

KYLA: Who does?

KYLE BIEDERMANN : (inaudible) I'll talk to you tomorrow, okay? I'll come and get you tomorrow, and (inaudible)—

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216th JUDICIAL DISTRICT

**Motion for Enforcement of Temporary Restraining Order,
Mediated Agreement on Temporary Orders, and Temporary Orders**

This Motion for Enforcement of Temporary Restraining Order, Mediated Agreement on Temporary Orders, and Temporary Orders is brought by Avian Ann Biedermann, Movant, and biological mother to the children subject of this suit. In support, Movant shows:

Discovery Level

1. Discovery in this case is intended to be conducted under Discovery Level 2 of Rule 190 of the Texas Rules of Civil Procedure.
2. Movant is a resident of Gillespie County, Fredericksburg, Texas.

Children

3. The children the subject of this suit are:

Name: Kyla Rae Biedermann
 Sex: Female
 Birthplace: Fredericksburg, Texas
 Birth date: January 26, 1992
 Present address: 110 W. Hackberry St.
 Fredericksburg, Texas
 S.S. number: 643-28-5526

Name: Emily Laine Biedermann
 Sex: Female

FILED
At 10:01 O'clock AM

SEP 26 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
*By Jan Davis
Chief Deputy*

Birthplace: Fredericksburg, Texas
Birth date: July 15, 1993
Present address: 110 W. Hackberry St.
Fredericksburg, Texas
S.S. number: 644-36-1424

Name: Loren Noel Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: December 20, 1994
Present address: 110 W. Hackberry St.
Fredericksburg, Texas
S.S. number: 641-44-9258

Name: Dana True Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: March 22, 1996
Present address: 110 W. Hackberry St.
Fredericksburg, Texas
S.S. number: 633-52-8790

Jurisdiction

4. This Court has continuing, exclusive jurisdiction of this case as a result of prior proceedings.

Parties and Service

5. The parties entitled to notice are as follows:
 - a. Kenneth Kyle Biedermann, 110 W. Hackberry Street, Fredericksburg, Texas, 78624, who is Respondent to this motion. Process should be served at that address, or at his place of employment, Ace Hardware, 1102 E Main St., Fredericksburg, Texas, 78624, or at any other location he may be found.
 - b. Respondent is the biological father of the children the subject of this suit.

Relevant Orders

6. The relevant orders relating to this Motion for Enforcement are:
 - A. Temporary Restraining Order:

On December 18, 2000, in Cause No. 9284, styled "*In the Matter of the*

Marriage of Avian Ann Biedermann and Kenneth Kyle Biedermann and In the Interests of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann, Minor Children" in the 216th Judicial District Court of Gillespie County, Texas, the Court signed a Temporary Restraining Order and Order Setting Hearing for Temporary Orders and is attached hereto as Appendix 1, incorporated herein for all purposes, and states in relevant part as follows:

"IT IS THEREFORE ORDERED that the clerk of this Court issue a temporary restraining order restraining Petitioner and Respondent, and Petitioner and Respondent are immediately restrained, from:

28. Molesting or disturbing the peace of the children or of another party."

- B. Mediation Agreement on Temporary Orders Until March 22, 2001, attached hereto as Appendix 2, incorporated herein for all purposes, and states in relevant part as follows:

"11. Each party shall refrain from engaging in conduct designed to alienate the children against the other parent."

- C. Agreed Temporary Orders Pursuant to "Mediation Agreement on Temporary Orders Until March 22, 2001, attached hereto as Appendix 3, incorporated herein for all purposes, and states in relevant part as follows:

"IT IS ORDERED that to minimize disruption of the children's education, daily routine, and association with friends, Avian Ann Biedermann and Kenneth Kyle Biedermann shall:

1. Refrain from engaging in conduct designed to alienated the children against the other parent;

2. Abide by the "Parent's Goals, Agreement and Guidelines Relating to the Children"

- D. Admonishment by the court during the July 5, 2001 Modification Hearing, transcript of said hearing is attached hereto as Appendix 4, incorporated herein for all purposes, and states in relevant part as follows:

"[pp. 111 & 112] Mr. Rudkin: I was going to raise one additional matter. I met with the children and in my perspective, these children are nine down to five years old. They have way too much knowledge - - -

“The Court: Of what’s going on?”

“Mr. Rudkin: - - - the buzz words and consternation and fighting back and forth with mom and dad, lawyers and this and that. I would request that there be an admonition that neither party discuss in any fashion, shape, or form the litigation process, court proceedings, anything to do with this matter.

“The Court: That’s an Order of the Court, should not be discussed or even mentioned other than the fact that if you have to, that we will be deciding it before school time, but it’s very important; and financial conditions and so forth, I think the children should not be involved in this process.

If either parent - I find either parent is making comments, derogatory comments or such about the other parent, this Court will certainly take sanctions against the person making the comments. It’s very important, and I think - and I think the grandparents, this would also apply. I think the grandparents can do a lot on both sides, a lot to kind of ease the pressure of the children.”

- E. Emergency Sui Sponte Order, attached hereto as Appendix 5, laid out strict guidelines for Kenneth Kyle Biedermann, and states in relevant part as follows:

(2) Until further Orders of this Court, the natural Father, Kenneth Kyle Bierdermann, the original Petitioner, shall have no contact or communication, in any manner, way, form or fashion with said minors until further Orders of this Court. Moreover, said Father shall not go, for any reason, within one hundred (100) yards of the original Petitioner’s residence and/or where a reasonable person would anticipate said minors being at such time, including schools, churches, etc.

(4) The Father shall not contact and/or attempt to contact, in any manner, the Mother, except by or through her attorney, the attorney ad litem in this cause, Dr. Jack Ferrell or such party the said Dr. Jack Ferrell shall designate in writing.

Violations

7. Respondent has violated the orders described above as follows:

matter of this suit;

- b. degrading the mother in the presence of the children the subject matter of this suit;
- c. planning through the children instead of together as parents;
- d. failing to present a united front on the handling of any problems with the children the subject matter of this suit;
- e. involving the children in and discussing with the children the litigation process, psychological consultations, and court proceedings;
- f. harassing a school administrator and child's teacher in order to gain access to the child;
- g. involving employees, family members, and friends to speak to the mother on his behalf.

[Attached as Appendix 6 and Appendix 7]

Punishment Requested

- 8. Movant requests that Respondent be held in contempt, jailed, and fined (not to exceed \$500.00) for each violation alleged. Movant further requests that Respondent be placed on community supervision for five years on release from jail or suspension of commitment.

Conditional Request for Clarifying Order

- 9. Movant requests that, if the Court finds that any part of the order sought to be enforced is not specific enough to be enforced by contempt, the Court enter a clarifying order more clearly specifying the duties imposed on Respondent and giving Respondent a reasonable time within which to comply.

Attorneys Fees

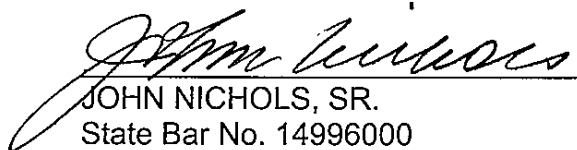
- 10. It was necessary to secure the services of John Nichols, Sr. and Pamela K. Bergman, licensed attorneys, to enforce and protect the rights of Avian Ann Biedermann and the child the subject of this suit. Respondent should be ordered to pay a reasonable attorney's fee, and a judgment should be rendered in favor of the attorney and against Respondent; or, in the alternative, reasonable attorney's fees should be taxed as costs and should be ordered paid directly to the undersigned attorney. Respondent should be further ordered to pay all other costs of this proceeding.

Prayer

Movant prays that Respondent be held in contempt, jailed (not to exceed six months on consecutive sentences), and fined (not to exceed \$500.00), that the Court order community supervision, that the Court clarify any part of its prior order found not specific enough to be enforced by contempt, for attorney's fees and costs, and for all further relief authorized by law.

Respectfully submitted,

LAW OFFICES OF JOHN NICHOLS



JOHN NICHOLS, SR.

State Bar No. 14996000

PAMELA K. BERGMAN

SBT # 00795804

1301 McKinney, Suite 3636

Houston, Texas 77010

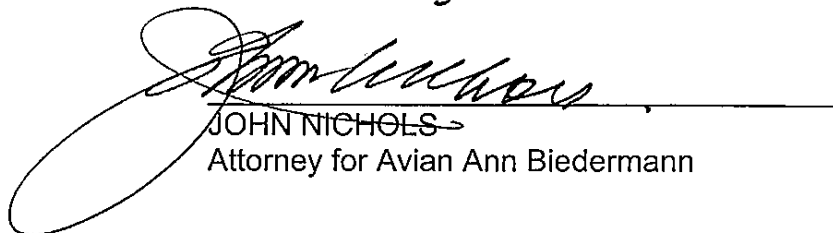
(713) 654-0708

(713) 654-0706 Fax

Attorney for Avian Ann Biedermann

Certificate of Service

I certify that a true copy of the above was served on each attorney or party in accordance with the Texas Rules of Civil Procedure on this the 25 day of September, 2001.



JOHN NICHOLS

Attorney for Avian Ann Biedermann

APPENDIX 1

No. 9284

IN THE MATTER OF §
THE MARRIAGE OF §
§
AVIAN ANN BIEDERMANN §
AND §
KENNETH KYLE BIEDERMANN §
§
AND IN THE INTERESTS OF §
KYL A RAE BIEDERMANN, §
EMILY LAINE BIEDERMANN, §
LOREN NOEL BIEDERMANN AND §
DANA TRUE BIEDERMANN, MINOR §
CHILDREN §

IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216^A JUDICIAL DISTRICT

**TEMPORARY RESTRAINING ORDER
AND ORDER SETTING HEARING FOR TEMPORARY ORDERS**

The application of Petitioner for temporary restraining order was presented to the Court today.

The children the subject of this suit are Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann.

The Court examined the pleadings and affidavit of Petitioner and finds that Petitioner is entitled to a temporary restraining order.

IT IS THEREFORE ORDERED that the clerk of this Court issue a temporary restraining order restraining Petitioner and Respondent, and Petitioner and Respondent are immediately restrained, from:

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

FILED
At 12:36 O'clock A M

DEC 18 2000
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

4. Causing bodily injury to the other party or to a child of either party.
5. Threatening the other party or a child of either party with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
7. Falsifying any writing or record relating to the property of either party.
8. Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
9. Damaging or destroying the tangible property of one or both parties, including any document that represents or embodies anything of value.
10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.
12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.
13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.
14. Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by order of this Court.
15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.

16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.
17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent or the parties' children.
19. Canceling, altering, or in any manner affecting the present level of coverage of any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' children.
20. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at either party's residence or in any manner attempting to withdraw any deposits for service in connection with those services.
21. Excluding the other party from the use and enjoyment of the other party's residence.
22. Opening or diverting mail addressed to the other party.
23. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.
24. Taking any action to terminate or limit credit or charge cards in the name of the other party.
25. Entering, operating, or exercising control over the motor vehicle in the possession of the other party.
26. Discontinuing or reducing the withholding for federal income taxes on the other party's wages or salary while this case is pending.
27. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including cancelled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

28. Molesting or disturbing the peace of the children or of another party.
29. Removing the children beyond the jurisdiction of the Court, acting directly or in concert with others.
30. Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled.
31. Hiding or secreting the children from the other party or changing the children's current place of abode.

IT IS FURTHER ORDERED that the parties are authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

To engage in acts reasonable and necessary to conduct the party's usual business and occupation.

This restraining order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law. This order shall be binding on the parties; on the parties' agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

IT IS FURTHER ORDERED that the clerk shall issue notice to Respondent, Kenneth Kyle Biedermann, to appear, and Respondent is ORDERED to appear in person, before this Court in the courthouse at 101 West Main St., Fredericksburg, Texas, on Jan 21, 2008 at 9:00 A. M. The purpose of the hearing is to determine whether, while this case is pending: *subject to Jury Decret*

- 1 The preceding temporary restraining order should be made a temporary injunction pending final hearing.
2. The additional temporary injunction prayed for should be granted.
3. Petitioner should be awarded the exclusive use and possession of the parties'

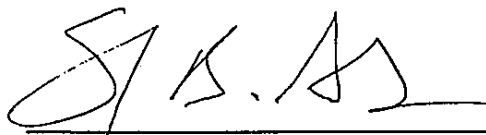
residence, furniture, and furnishings at 110 W. Hackberry St., Fredericksburg, Texas while this case is pending, and Respondent should be enjoined from entering or remaining on the premises of the residence, except as authorized by order of this Court.

4. Petitioner should be awarded exclusive use and control of the _____ motor vehicle, and Respondent should be enjoined from entering, operating, or exercising control over it.
5. Petitioner should be appointed sole managing conservator.
6. Respondent should be ordered to pay child support, health insurance premiums for coverage on the children, and the children's uninsured medical expenses while this case is pending.
7. The Court should order the preparation of a social study into the circumstances and condition of the children and of the home of any person requesting managing conservatorship or possession of the children.
8. Respondent should be appointed temporary possessory conservator.
9. The Court should order the psychological evaluation of the parties and the children.
10. The Court should appoint a guardian and attorney ad litem to represent the interests of the children.
9. The Court should order Respondent to produce copies of income tax returns for tax years 1989 - 1999, a current financial statement, and current pay stubs by a date certain.
10. The Court should order Respondent to pay reasonable interim attorney's fees and expenses.
11. The Court should order Respondent to pay estimated income taxes on the due dates as required by the Internal Revenue Service and under the Social Security numbers of both Petitioner and Respondent and to pay any ad valorem taxes as due on the properties of the parties.
12. The Court should order Respondent to provide a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the

form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), form 7-1.

13. The Court should order Respondent to produce copies of all the tax information necessary to prepare Petitioner's tax returns for tax year 1999, including tax returns and all supporting schedules for years 1992 - 1998, by a date certain.
14. The Court should order Respondent to participate in an alternative dispute resolution process before trial of this matter.
15. The Court should order Respondent to execute all necessary releases required by Petitioner to obtain any discovery allowed by the Texas Rules of Civil Procedure.
16. The Court should order a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.
17. The Court should make all other and further orders respecting the property and the parties that are pleaded for or that are deemed necessary and equitable and for the safety and welfare of the children.

SIGNED on Dec. 18, 2000 at 12:30 P.M.



JUDGE PRESIDING

APPENDIX 2

Biedermann
vs.

4284

216th Dist. CT
Gillespie County

Biedermann

Mediation Agreement

At 11:10 O'clock AM

on Temporary Orders

until March 22, 2001

FEB 20 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

By Theresa Murray Deputy

Agreement made this 19th day of February, 2001, between Avian Biedermann ("Avian") and Kenneth Biedermann ("Kyle") is as follows:

FEB. 20, 2001
APPROVED & MADE
A PART OF RECORD
Charles Stordahl, J. L.

1. Kyle shall vacate the premises located at 110 W. Hackberry, Fredericksburg, Texas, on or before February 21, 2001, at 5:00 P.M.

2. Avian shall have exclusive possession of said residence until March 23, 2001.

3. Unless the parties mutually agree otherwise, Kyle shall have visitation with the children on each Saturday of the month beginning at 5:00 P.M. on Saturday and ending when school begins the following Monday. Avian shall have possession of the children at all other times.

4. Kyle shall pay temporary family support to Avian by discharging the following debts and obligations until further order of the court:

- 1) Mortgage payment to Greenpoint in approximate amount of \$978.00 to month

Handwritten initials and signatures on the left margin.

Handwritten initials and signatures at the bottom left.

2) Home Equity payment to Banc One in approximate amount of \$292.00 a month.

3) Monthly gas, electric and water bills at 110 W. Hackberry, Fredericksburg, Texas

4) No more than \$50.00 per month for Avian's vehicle at Jeks.

5. The parties will engage in informal discovery through their attorneys, including document production, by requests made in writing or by telephone. Such discovery requests and responses shall be made within 10 days of the date of this agreement.

6. The parties agree to the guidelines attached hereto.

7. Existing mutual restraining orders shall remain in effect.

8. The parties shall obtain a setting on additional temporary orders for hearing on March 23, 2001. On February ~~22~~²⁰, 2001, the parties shall obtain a setting on final trial in May of 2001 before

Handwritten initials and signatures on the left margin, including "MS." and "KB".

Judge Charles Sheriel

9. The parties shall be mutually enjoined from discussing this case, including child support or financial issues and any agreement or conflict between the parties, with ~~the~~ any child or within the child's sphere of awareness or permitting ~~the~~ ^{any} child to remain in the presence of any person doing the same.

10. THIS AGREEMENT IS NOT SUBJECT TO REVOCATION.

11. Each party shall refrain from engaging in conduct designed to alienate the children against the other parent.

12. ~~The~~ Kyle shall maintain health insurance on Arion and the children until further order of the Court.

Dated this 19th day of February, 2001.

Arion Aune Biedermann

Arion Aune Biedermann

Pamela Bergman

Pamela Bergman

John Nichols Jr

John Nichols

Kenneth Kyle Biedermann

Kenneth Kyle Biedermann

D. J. Halm

A. J. Halm

Chris Wallendorf

Parents' Goals, Agreements and Guidelines Relating to the Children

Kyle and Arian agree to attempt, at all times, to act in a manner consistent with the following goals, which Kyle and Arian believe to be in their children's best interest:

- * to provide the children with an emotional environment in which each is free to continue to love the other parent and to spend time with the other parent;
- * to encourage good feelings from the children about the other parent and their extended family, if any;
- * to encourage the children to remember the other parent on special occasions, allowing them to telephone on a reasonable basis, the time and length of the phone calls to be in accordance with family rules;
- * to communicate with the other parent openly, honestly and regularly to avoid misunderstandings which are harmful to the children;
- * to plan together as parents rather than through the children;
- * to plan and consult with the other parent in advance for time with the children;
- * to not take sides or take issue with decisions or actions made by the other parent, especially in front of the children;
- * to present a united front on the handling of any problems with the children;
- * to refrain from fighting, arguing or degrading the other parent in the presence of the children;
- * to refrain from withholding time with the other parent as a punishment to the children or the other parent;
- * to take a consistent and predictable role in the children's lives, using time with the children to strengthen a relationship with the children;


[Handwritten signatures and initials]
K.B.
A.B.
K.B.

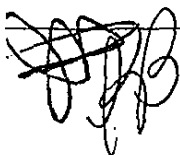
APPENDIX 1

- * to use discretion as to the time and frequency of phone calls to the children;
- * to realize that time with the children and financial support are two separate areas and that one has no legal effect on the other;
- * to make changes in plans by mutual agreement with reasonable notice to the other parent, except for emergencies;
- * to be flexible in arranging dates and times with the children, so these plans do not interfere with important family events or prior planned activities of the other parent;
- * to strictly observe time schedules with the children. If either parent will be late in exchanging the children for periods of possession, that parent should personally inform the other parent as to the reason for the lateness and estimated new time;
- * to refrain from burdening the children with adult worries, e.g., financial, career, social;
- * to behave discreetly with other people in the children's presence; and,
- * to treat the children as unique persons with respect to feelings and needs.

Kyle and Arian agree that it is in the best interest and welfare of the children that the children be accorded rights and as such are third-party beneficiaries of this agreement and stipulation between their parents. Both parents acknowledge the following rights of the children, to wit:


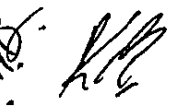

- * the right to a continuing relationship with both parents;
- * the right to be treated as an important human being, with unique feelings, ideas and desires;
- * the right to continuing care and guidance from both parents;
- * the right to know and appreciate what is good in each parent without one parent degrading the other;


r. KH



- * the right to express love, affection and respect for each parent without having to stifle that love because of fear of disapproval by the other parent;
- * the right to know that the parents' decision to divorce was not the responsibility of the children;
- * the right not to be a source of argument between the parents;
- * the right to honest answers to questions about the changing family relationships;
- * the right to be able to experience regular and consistent contact with both parents and the right to know the reason for any cancellation of time or change of plans; and,
- * the right to have a relaxed, secure relationship with both parents without being placed in a position to manipulate one parent against the other.

APPENDIX 1

APPENDIX 3

Cause No. 9284

MAY 14 2001
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
AVIAN ANN BIEDERMANN	§	
AND	§	
KENNETH KYLE BIEDERMANN	§	
	§	GILLESPIE COUNTY, T E X A S
AND IN THE INTERESTS OF	§	
KYLA RAE BIEDERMANN,	§	
EMILY LAINE BIEDERMANN,	§	
LOREN NOEL BIEDERMANN AND	§	
DANA TRUE BIEDERMANN, MINOR	§	
CHILDREN	§	216TH JUDICIAL DISTRICT

Agreed Temporary Orders Pursuant to
"Mediation Agreement on Temporary Orders Until March 22, 2001"

On March 23, 2001, the Court considered Petitioner's Motion for Temporary Orders and made the following orders for a Temporary Order.

Appearances

Petitioner, Avian Ann Biedermann, appeared in person and through attorneys of record, John Nichols and Pamela K. Bergman, and announced ready.

Respondent, Kenneth Kyle Biedermann, appeared in person and through attorney of record, Allen J. Halm, and announced ready.

Jurisdiction

The Court, after examining the record and hearing the evidence and argument of counsel, finds that all necessary prerequisites of the law have been legally satisfied and that the Court has jurisdiction of this case and of all the parties.

Findings

The Court finds that the parties had previously entered into a mediated settlement agreement for temporary orders entitled "Mediation Agreement on Temporary Orders Until March 22, 2001," in a document separate from this Temporary Order. The Court approved the agreement and ordered the parties to continue to abide by the

terms of the mediated settlement agreement for temporary orders through the pendency of this suit or until further Order of this Court. This Temporary Order is stipulated to represent a merger of the "*Mediation Agreement on Temporary Orders Until March 22, 2001.*" To the extent there exist any differences between the said agreement and this Temporary Order, this Temporary Order shall control in all instances.

A copy of the "*Mediation Agreement on Temporary Orders Until March 22, 2001*" is attached hereto as Appendix 1.

Children

The Court finds that the following orders for the safety and welfare of the children, Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann, are in the best interest of the children.

Minimizing Disruption

IT IS ORDERED that to minimize disruption of the children's education, daily routine, and association with friends, Avian Ann Biedermann and Kenneth Kyle Biedermann shall:

1. Refrain from engaging in conduct designed to alienate the children against the other parent;
2. Abide by the "Parent's Goals, Agreements and Guidelines Relating to the Children," attached hereto as Appendix 2.

Temporary Possession Order

(a) Mutual Agreement or Specified Terms for Possession

IT IS ORDERED that the temporary conservators shall have possession of the children at times mutually agreed to in advance by the parties, and, in the absence of mutual agreement, it is ORDERED that the conservators shall have possession of the children under the specified terms set out in this Temporary Possession Order.

(b) Except as otherwise explicitly provided in this Temporary Possession Order, during the pendency of this case, Kenneth Kyle Biedermann shall have the right to possession of the children as follows:

1. Saturdays--On each Saturday of the month beginning at 5:00 P.M. on Saturday and ending when school begins on the immediately following Monday.

Avian Ann Biedermann shall have the right of possession of the children at all other times not specifically designated in this Temporary Possession Order for Kenneth Kyle Biedermann.

This concludes the Temporary Possession Order.

The periods of possession ordered above apply to each child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

Temporary Family Support

IT IS ORDERED that Kenneth Kyle Biedermann shall pay temporary family support to Avian Ann Biedermann by discharging the following debts and obligations, until further order of this Court:

1. Kenneth Kyle Biedermann is ORDERED to pay the monthly mortgage payment to Greenpoint Mortgage Funding, Inc. in the amount of \$928.00.
2. Kenneth Kyle Biedermann is ORDERED to pay the monthly home equity payment to Bank One, Texas, N.A. in an approximate amount of \$292.14 per month.
3. Kenneth Kyle Biedermann is ORDERED to pay Avian Ann Biedermann's monthly gas, electric and water bills at 110 W. Hackberry, Fredericksburg, Texas 78624.
- 4.. Kenneth Kyle Biedermann is ORDERED to pay no more than \$50.00 per month for Avian Ann Biedermann's vehicle at Jeks.

Temporary Injunction as to Children

The Court finds that, based on the public policy considerations stated in section 153.001 of the Texas Family Code, it is in the best interests of the children that the following temporary injunction be issued and related orders be entered.

IT IS ORDERED that Avian Ann Biedermann and Kenneth Kyle Biedermann and their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise are temporarily enjoined from:

1. Molesting or disturbing the peace of the children or of any other party.
2. Removing the children beyond the jurisdiction of the Court, acting directly or in concert with others.

3. Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled.

4. Hiding or secreting the children from the other party or changing the children's current place of abode.

Information Regarding Parties and Children

Information regarding each party is as follows:

Name: Avian Ann Biedermann
Social Security number: 451-37-2272
Driver's license number/issuing state: 00705712 Texas
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624
Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: Self-employed
Address of employment: 110 West Hackberry
Fredericksburg, Texas 78624
Work telephone number: 830/997-2622

Name: Kenneth Kyle Biedermann
Social Security number: 101-54-5263
Driver's license number/issuing state: 02811412
Current residence address: 411 East College
Fredericksburg, Texas
Mailing address: Same
Home telephone number: 830/997-7611
Name of employer: B L & H, Inc.
Address of employment: 1102 E. Main, Suite B
Fredericksburg, Texas 78624
Work telephone number: 830 997-7611

Name: Kyla Rae Biedermann
Social Security number: 643-28-5526
Driver's license number/issuing state: None
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624
Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: None.

Address of employment: None.
Work telephone number: None.

Name: Emily Laine Biedermann
Social Security number: 644-36-1424
Driver's license number/issuing state: None
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624

Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: None.
Address of employment: None.
Work telephone number: None.

Name: Loren Noel Biedermann
Social Security number: 641-44-9258
Driver's license number/issuing state: None
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624

Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: None.

Address of employment: None.
Work telephone number: None.

Name: Dana True Biedermann
Social Security number: 633-52-8790
Driver's license number/issuing state: None
Current residence address: 110 West Hackberry,
Fredericksburg, Texas 78624

Mailing address: Same
Home telephone number: 830/997-2622
Name of employer: None.
Address of employment: None.
Work telephone number: None.

Required Notices

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO

GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Central File Maintenance, P.O. Box 12048, Austin, Texas 78711-2048.

Warnings to Parties

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY

A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

Property and Parties

The Court finds that the following orders respecting the property and parties are necessary and equitable.

Temporary Award of Property

Pursuant to the "*Mediated Agreement on Temporary Orders Until March 22, 2001*", Avian Ann Biedermann was awarded the exclusive and private use and possession of the following property during the pendency of this suit:

1. The homestead located at 110 West Hackberry, Fredericksburg, Texas 78624, until March 23, 2001. Kyle Kenneth Biedermann ~~was ordered~~ to vacate said premises on or before February 21, 2001.
agreed
KB

Health Insurance

IT IS ORDERED that Kenneth Kyle Biedermann shall maintain Avian Ann Biedermann and the parties' children as insured beneficiaries on his health insurance policy while this case is pending.

Temporary Injunction

The Court finds that the parties have agreed that the existing restraining order shall remain in effect and to the entry of the following temporary injunctions while this case is pending.

The temporary injunction granted below shall be effective immediately and shall be binding on Avian Ann Biedermann and Kenneth Kyle Biedermann; on their agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party or a family member or child of either party in person, by telephone, or in writing to take unlawful action against any person.

3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.
4. Causing bodily injury to the other party or to a family member or child of either party.
5. Threatening the other party or a family member or child of either party with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
7. Falsifying any writing or record relating to the property of either party.
8. Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
9. Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.
10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.
11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of Petitioner or Respondent, whether personalty or realty, and whether separate or community, except as specifically authorized by order of this Court.
12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by order of this Court.
13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.
14. Spending any sum of cash in the other party's possession or subject to the other party's control for any purpose, except as specifically authorized by order of this Court.

15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by order of this Court.
16. Entering any safe-deposit box in the name of or subject to the control of Petitioner or Respondent, whether individually or jointly with others.
17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of Petitioner or Respondent, except as specifically authorized by order of this Court.
18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of Petitioner or Respondent or the parties' children.
19. Canceling, altering, failing to renew or pay premium, or in any manner affecting the present level of coverage of any casualty, automobile, or health insurance policies insuring the parties' property or persons including the parties' children.
20. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at or in any manner attempting to withdraw any deposits for service in connection with those services.
21. Excluding the other party from the use and enjoyment of the other party's residence.
22. Opening or diverting mail addressed to the other party.
23. Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.
24. Taking any action to terminate or limit credit or charge cards in the name of the other party.
25. Entering, operating, or exercising control over the motor vehicle in the possession of the other party.
26. Discontinuing or reducing the withholding for federal income taxes on the other party's wages or salary while this case is pending.

27. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including cancelled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

IT IS ORDERED that Avian Ann Biedermann is specifically authorized:

1. To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.
2. To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.
3. To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.
4. To engage in acts reasonable and necessary to conduct Petitioner's usual business and occupation.

IT IS ORDERED that Kenneth Kyle Biedermann is specifically authorized:

1. To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.
2. To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.
3. To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.
4. To engage in acts reasonable and necessary to conduct Respondent's usual business and occupation.

Additional Temporary Injunction

The Court finds that the parties have agreed to the entry of the following additional temporary injunction while this case is pending:

The temporary injunction granted below shall be effective immediately and shall be binding on Avian Ann Biedermann and Kenneth Kyle Biedermann; on their agents, servants, employees, and attorneys; and on those persons in active concert or

participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

1. Discussing this case, or any related issue, including child support or financial issues and any agreement or conflict between the parties, with any child or within the child's sphere of awareness or permitting any child to remain in the presence of any person doing the same.
2. Engaging in conduct designed to alienate the children against the other parent.

Service of Writ

Petitioner and Respondent waive issuance and service of the writ of injunction, by stipulation or as evidenced by the signatures below. IT IS ORDERED that Petitioner and Respondent shall be deemed to be duly served with the writ of injunction.

Termination of Mediation and Discovery Resumed

The Court finds that the agreement of the parties, as set out in the "*Mediation Agreement on Temporary Orders Until March 22, 2001*", concerning the mutual exchange of informal discovery is no longer in effect.

The Court also finds that the parties have fully complied with this Court's *Order of Referral to Mediation and Rules of Mediation* entered on January 15, 2001 by their attendance at a mediation session with Chris Wallendorf on March 22, 2001.

The Court also finds that the parties were not able to reach a settlement agreement and that by declaration of the Mediator, Chris Wallendorf, further efforts at mediation are no longer worthwhile.

IT IS THEREFORE ORDERED by the Court that mediation shall be terminated and all discovery previously abated shall resume in accordance with the Texas Rules of Civil Procedure for requesting and responding to discovery.

Enforcement Proceedings and Agreement for Prior Settings

The Court finds that the agreement of the parties, as set out in the "*Mediation Agreement on Temporary Orders Until March 22, 2001*", concerning settings for temporary orders and trial are no longer in effect.

The Court also finds that Avian Ann Biedermann and Kenneth Kyle Biedermann have agreed that any enforcement proceedings brought by either party in this cause of action shall be heard at the time of the trial in this cause of action.

IT IS ORDERED THEREFORE by the Court that any motions for enforcement filed in this cause of action by either party shall be heard concurrently at the time of the trial in this case.

Duration

These Temporary Orders shall continue in force until the signing of the Final Decree of Divorce or until further order of this Court.

SIGNED on May 17, 2001

Charles Storrey
JUDGE PRESIDING

APPROVED AS TO SUBSTANCE:

Avian Ann Biedermann
Avian Ann Biedermann

Kenneth Kyle Biedermann
Kenneth Kyle Biedermann

APPROVED AS TO FORM:

John Nichols, Sr.
John Nichols, Sr.
SBT # 14996000
Pamela K. Bergman
Pamela K. Bergman
The Law Offices of John Nichols
1301 McKinney, Suite 3636
Houston, Texas 77010
713/654-0708
713/654-0706 FAX

Allen J. (Jody) Halm
Allen J. (Jody) Halm
SBT # 08804350
The Law Offices of A.J. Halm
340 Emerald Loop
Fredericksburg, Texas 78624
830/997-6975
830/997-9485 FAX
Attorney for Kenneth Kyle Biedermann

Attorneys for Avian Ann Biedermann

APPENDIX 4

REPORTER'S RECORD

ORIGINAL

TRIAL COURT CAUSE NO. 9284

3 IN THE MATTER OF X IN THE DISTRICT COURT
 4 THE MARRIAGE OF X
 5 AVIAN ANN BIEDERMANN X
 6 AND X
 7 KENNETH KYLE BIEDERMANN X 216TH JUDICIAL DISTRICT
 8 AND IN THE INTEREST OF X
 9 KYLA RAE BIEDERMANN, X
 10 EMILY LAINE BIEDERMANN, X
 11 LOREN NOEL BIEDERMANN, X
 12 AND DANA TRUE BIEDERMANN, X
 13 MINOR CHILDREN X GILLESPIE COUNTY, TEXAS

* * * * *

MODIFICATION HEARING

* * * * *

14 On Thursday, the 6th day of July,
 15 2001, from 9:00 o'clock a.m. to 3:00 o'clock p.m.,
 16 the following proceedings came on to be heard in the
 17 above-entitled and numbered cause; before the
 18 Honorable Charles Sherrill, Senior Judge Presiding,
 19 held in Fredericksburg, Gillespie County, Texas:

EXHIBIT
 tabbies

Proceedings reported by computerized stenotype machine, valid if it bears my raised seal.

Paula R. Loetz
CSR No. 1493

1 MR. NICHOLS: Thank you, Judge.

2 THE COURT: Yes, sir.

3 MR. RUDKIN: I was going to raise one
4 additional matter. I met with the children and in my
5 perspective, these children are nine down to five
6 years old. They have way too much knowledge ---

7 THE COURT: Of what's going on?

8 MR. RUDKIN: --- the buzz words and
9 consternation and fighting back and forth with mom
10 and dad, lawyers and this and that. I would request
11 that there be an admonition that neither party
12 discuss in any fashion, shape, or form the litigation
13 process, court proceedings, anything to do with this
14 matter.

15 THE COURT: That's an Order of the
16 Court, should not be discussed or even mentioned
17 other than the fact that if you have to, that we will
18 be deciding it before school time, but it's very
19 important; and financial conditions and so forth, I
20 think the children should not be involved in this
21 process.

22 If either parent - I find out either
23 parent is making comments, derogatory comments or
24 such about the other parent, this Court will
25 certainly take sanctions against the person making

1 the comments. It's very important, and I think - and
2 I think the grandparents, this would also apply. I
3 think the grandparents can do a lot on both sides, a
4 lot to kind of ease the pressure of the children.

5 Let me say this about children: They
6 learn very fast how to push buttons and they can
7 upset mother or they can upset father or they can
8 upset the grandfather or grandmother or any of the
9 other relatives, so forth, by -- they figure that out
10 pretty fast and they know how to play mother and
11 father against one another, and you have to guard
12 against it. You have to stay united.

13 Now, I really -- this is a marriage
14 that I feel like is probably broken, but I really
15 dislike seeing it go through, because both of you are
16 apparently very caring about your children, both very
17 attractive, both very nice people. In other words, I
18 think this has gotten to the point we're letting our,
19 say, ill feelings interfere with your judgment and
20 thinking on this matter, and I think both parents --
21 and, of course, I've only kind of heard one side
22 here, but I think both parents are nice people. I'm
23 impressed with the grandparents, and this needs to be
24 worked the best it can for the benefit of those
25 children.

PAULA R. LOETZ
CERTIFIED SHORTHAND REPORTER
P. O. BOX 290092, KERRVILLE, TEXAS 78029-0092
TEL: (830) 896-1984 FAX: (830) 257-1208


1 STATE OF TEXAS X
 2 COUNTY OF GILLESPIE X

3 I, Paula R. Loetz, Certified Shorthand Reporter,
 4 acting Deputy Official Court Reporter in and for the
 5 216th Judicial District Court of Gillespie County,
 6 State of Texas, do hereby certify that the above and
 7 foregoing contains a true and correct transcription
 8 of all portions of evidence and other proceedings
 9 requested by counsel for the parties to be included
 10 in this volume of the Reporter's Record, in the
 11 above-styled and -numbered cause, all of which
 12 occurred in open court or in chambers and were
 13 reported by me.

14 I further certify that this Reporter's Record of
 15 the proceedings truly and correctly reflects the
 16 exhibits, if any, offered by the respective parties.

17 I further certify that the total cost for the
 18 preparation of this Reporter's Record is \$ 469⁶⁵
 19 and was paid by Petitioner.

20 Witness my hand and seal on this, the 15th
 21 day of July, 2001.

22 
 23 Paula R. Loetz
 24 Certified Shorthand Reporter
 25 P.O. Box 290092
 Kerrville, Texas 78029-0092
 (830) 896-1984 (830) 257-1208 - Fax
 CSR No. 1493, Expires: 12/31/02

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 CERTIFIED SHORTHAND REPORTER
 P. O. BOX 290092, KERRVILLE, TEXAS 78029-0092
 TEL: (830) 896-1984 FAX: (830) 257-1208

APPENDIX 5

At 9:50 O'clock A M

CAUSE NO. 9284

AUG 20 2001
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

IN THE MATTER OF)
THE MARRIAGE OF)
)
AVIAN ANNE BIEDERMANN)
AND)
KENNETH KYLE BIEDERMANN)
)
AND IN THE INTERESTS OF)
KYL A RAE BIEDERMANN,)
EMILY LAINE BIEDERMANN,)
LOREN NOEL BIEDERMANN AND)
DANA TRUE BIEDERMANN,)
MINOR CHILDREN)

IN THE DISTRICT COURT OF
)
)
GILLESPIE COUNTY, TEXAS
)
)
)
)
)
)
)
)
)
216TH JUDICIAL DISTRICT

EMERGENCY SUI SPONTE ORDER

On this the 20th day of August, 2001, the Court has heretofore ascertained and learned from two credible professionals that the original Respondent, KENNETH KYLE BIEDERMAN, in the above numbered and styled cause, being the natural Father of the four (4) minor children involved in this matter, has and continues to ignore, violate and disregard the Court's Orders, admonishments and instructions with reckless abandonment, impunity, knowingly, purposely and malevolently to the great harm, detriment, emotional stability, ^{abuse} and above said minors by:

- (1) His sleeping arrangement with said minors; and,
- (2) degrading the minors' mother in their presence.

THEREFORE, the Court does make and enter the following Orders which are effective immediately for the protection of said minors and for their best interest.

- (1) The original Petitioner, AVIAN ANN BIEDERMAN, the natural mother, shall be the sole temporary managing Conservator of the four minor children with all the power, authority, duties, etc., as provided by law.

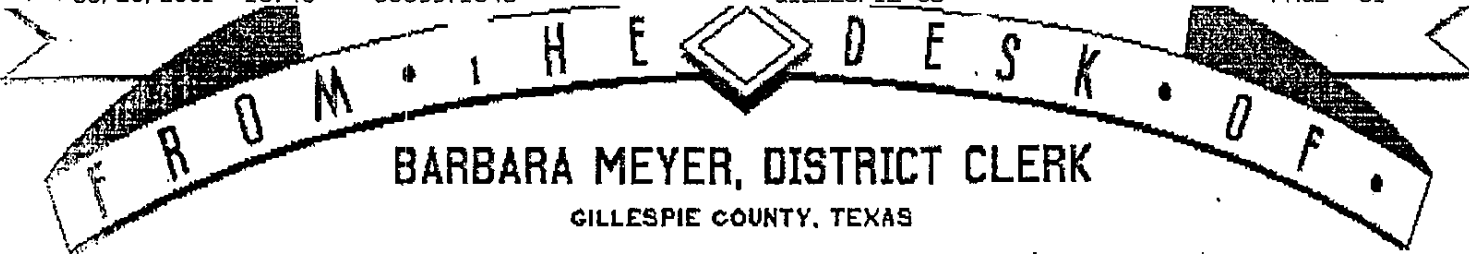
- (2) Until further Orders of this Court, the natural Father, KENNETH KYLE BIEDERMANN, the original Petitioner, shall have no contact or communication, ^{WITH SAID MINORS (2)} in any manner, way, form or fashion, until further Orders of this Court. Moreover, said Father shall not go, for any reason, within one hundred (100) yards of the original Petitioner's residence and/or where a reasonable person would anticipate said minors being at such time, including schools, churches, etc.
- (3) Any and all Orders and agreements heretofore made in this case, not in conflict with this Order, ^{thru it} or do not violate the intent or spirit of this Order, shall remain in full force and effect.
- (4) The Father shall not contact and/or attempt to contact, in any manner, the Mother, except by or through his attorney, the attorney ad litem in this cause, Dr. Jack Ferrell or such party the said Dr. Jack Ferrell shall designate in writing.
- (5) The Father shall present to the Court within ten (10) days from the date hereof in writing and sworn to:
- (a) Why his parental rights should not be summarily terminated;
 - (b) why all of his pleadings should not be struck;
 - (c) why all of the fees of the attorney ad litem should not be paid by him;
 - (d) why all costs of Court should not be assessed against him;
 - (e) why all costs of the Plaintiff's attorney's fees should not be assessed against him;
 - (f) why it should not be determined that he is in contempt of Court, be fined and/or incarcerated in the Gillespie County Jail; or
 - (g) that the information furnished to the Court is untrue and/or not accurate.

All matters herein are subject to revisions, modifications and others by this Court.

Signed this the 20th day of August, 2001.


CHARLES SHERRILL
Senior Judge

Copy Faxed To (per Judge Sherrill)
Atty John Nichols & Atty Pamela K. Bergman
Atty Allen (Jody) Halm
Atty Kurt Rudkirk
Dr. Jack G. Ferrell, Jr.
8-20-01 *lm*



BARBARA MEYER, DISTRICT CLERK
 GILLESPIE COUNTY, TEXAS

August 20, 2001

Fax for: Atty John Nichols
 & Atty Pamela Bergman
 713-654-0706

Ref: 9284
 Biedermann Divorce

Fax contains 4 pages
 including cover.

Barbara Meyer, District Clerk

BARBARA MEYER, DISTRICT CLERK

GILLESPIE COUNTY, TEXAS
 101 WEST MAIN STREET, ROOM #204
 FREDERICKSBURG, TEXAS 78624
 249-997-6317
 830



APPENDIX 6

Biedermann Audio Tape Transcript Excerpts

1. Audio Taped Transcript of May 24-25, 2001:

KYLE BIEDERMANN : I'm glad you called. I didn't know if you were gonna call or not. What are you guys doing?

KYLA: Um, Mamma's (inaudible) to get ready for bed.

KYLE BIEDERMANN : What's that.

KYLA: Momma's telling us to get ready for bed.

KYLE BIEDERMANN : Oh, really?

KYLA: Uh-huh.

KYLE BIEDERMANN : I came by earlier, but all you girls were inside.

KYLA: We were?

KYLE BIEDERMANN : All you girls were in the house. I drove by and saw Mommy outside.

KYLA: What?

KYLE BIEDERMANN : I drove by, but only Mommy was outside.

KYLA: Yeah.

KYLE BIEDERMANN : What were you guys doing?

KYLA: Watching TV.

2. Audio Taped Transcript of May 24-25, 2001:

KYLE BIEDERMANN : Well, they just said I should be allowed to talk to you girls. That's what, um, the court says. And, Mommy wouldn't let me talk to you girls last night.

EMILY: Why?

KYLE BIEDERMANN : I don't know. You'll have to ask Mommy that.

EMILY: Well, Daddy, Loren and Kyla were crying about you, 'cause they

thought the police took you to jail.

KYLE BIEDERMANN : No, no. Not at all. They, uh, you know, they, uh, I just came, I, you know, just waited for them to come, so they would know that Mommy's not letting me talk to you girls.

EMILY: (inaudible)

KYLE BIEDERMANN : (inaudible) that, you know, I'm allowed to talk to you girls, and Momma wouldn't let me. So, I came over to see you. Now, where were you, Emmy?

EMILY: Um, I'm at home, on the couch.

KYLE BIEDERMANN : No, when, where were you, last night?

EMILY: Oh, why?

KYLE BIEDERMANN : Oh, well, just, did you look out the window? Did you see anything?

EMILY: Well, um, we thought that, um, we thought that you, uh, got arrested.

KYLE BIEDERMANN : No, no. I didn't do anything wrong.

KYLE BIEDERMANN : Dana True, you hang up right now. Dana True, if you don't hang up, you will be in trouble when I see you. Do you understand me? One at a time—

DANA TRUE: (inaudible) go on a trip.

KYLE BIEDERMANN : —hang up; hang up the phone, Dana True, now.

DANA TRUE: (inaudible) go with Mommy, right?

KYLE BIEDERMANN : Well, we'll see. But, you're gonna get in trouble if you don't hang up the phone—

DANA TRUE: For what? What happened?

KYLE BIEDERMANN : Dana True, if you do what I told you—

DANA TRUE: But, what happened?

KYLE BIEDERMANN : Dana True, I'm gonna spank you so hard, and

you're not gonna get to do some things this weekend, if you don't hang up the phone right now. You'll get your turn.

3. **Audio Taped Transcript of May 24-25, 2001:**

KYLE BIEDERMANN : Dana True, get off the phone. Between us, Kyla, Mommy went ahead and just got you all involved, and got you girls all upset about calling the cops. But, there's no reason to do that. And, she was in the wrong. Now, I'm not allowed to come to the house. But, I know I was wrong, too. But, I'm gonna come there, 'cause I want to see you girls, and I'm supposed to be able to. It was wrong for Mommy not, not to let me talk to you girls. Do you understand?

KYLA: Uh-huh.

KYLE BIEDERMANN : That's the whole, if she doesn't want, if she wants to protect you girls from this, and keep you, you know, keep, you know, not have you affected by it, right?

KYLA: Yes.

KYLE BIEDERMANN : And, uh, I, I would think that calling the police so quickly, like that, really gets you involved, doesn't it?

KYLA: Uh-huh.

4. **Audio Taped Transcript, undated, 2001:**

NICK: Oh. You just got done talking to your dad.

LOREN: No, you're not Daddy. No, this is not Daddy.

NICK: It's Nick the bomb.

LOREN: Yeah. What else did you do on your vacation? What else did you do on your vacation?

NICK: Um, got a lot of clothes, and got a lot of stuff.

LOREN: Oh. That's what my mom does. She wastes her money.

5. **Audio Taped Transcript, undated, 2001:**

KYLE BIEDERMANN : Is this Loren?

LOREN: Yes.

KYLE BIEDERMANN : Loren. I've been waiting for your call. Thank you for calling, Loren.

LOREN: Momma wouldn't let us.

KYLE BIEDERMANN BIEDERMANN : Well, where are you?

LOREN: Home.

KYLE BIEDERMANN : You're in Fredericksburg?

LOREN: Yes.

KYLE BIEDERMANN : Oh, my Loren. Does Mommy know you're calling me?

LOREN: No.

KYLE BIEDERMANN : Oh, Loren. Oh, Loren, you make Daddy so happy. Do you know that?

LOREN: Yes.

KYLE BIEDERMANN : I love you so much, Loren. Thank you for calling. Where are you? In, in the house?

LOREN: I'm in Momma's bedroom.

KYLE BIEDERMANN : And, where's Mommy?

LOREN: Outside, talking to John.

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DANA TRUE: Could you come by?

KYLE BIEDERMANN : Well, I can't come by. I would, right now, if I could, Dana True.

DANA TRUE: Why?

KYLE BIEDERMANN : Well, Mommy won't let me come by.

DANA TRUE: Momma's not here.

KYLE BIEDERMANN : Where is she?

DANA TRUE: I don't know.

KYLE BIEDERMANN : Well, she's probably outside or across the street. Dana True, I'm so happy to hear your voice. I miss you so much.

DANA TRUE: Well, why won't you just drive over here?

KYLE BIEDERMANN : Well, last time I came over, she called the police on me, Dana True.

DANA TRUE: Oh, Daddy.

KYLE BIEDERMANN : You don't think she'd do that again?

DANA TRUE: No. She won't do that. She's not here.

KYLE BIEDERMANN : She's across the street, or she's outside, Dana True. She doesn't leave you alone at the house.

6. **Audio Taped Transcript May 24-25, 2001:**

KYLE BIEDERMANN : You have reached 997-8385. Please leave a message after you hear the beep.

KYLA: Hi, Daddy. This is Kyla. Um, I got the information, as you know. It, um, the rodeo's changed. Mom has to call the people, and see what time. And, it costs money, so bring money. At least more than 15 dollars, I think. I don't know, but, it's gonna cost us 20 dollars to get in. That's all I know. Um, so, um, and, it's gonna be a rodeo. And, and, when I get the time, I'll call you. Um, Daddy, we can leave Wednesday instead of Thursday, if that's okay with you. We can leave Wednesday. Because, Ms. Klein said there's nothing happening on Thursday. All they're doing is cleaning. So, she said she would have someone clean my desk for me. Um, she said we could leave Wednesday, like I said. Um, and if you want to stay for Thursday, that's fine. Um, but I really wouldn't want to. Um, you can either leave Wednesday or Thursday. That's what I know, right now. Okay? Bye.

(Phone disconnects)

7. **Audio Taped Transcript May 24-25, 2001:**

KYLE BIEDERMANN : I told you to call me back, and you didn't, right?

KYLA: Yes, I got the information. I went and asked Tara for the information—Dana True. I went and asked for the information, and,

Mommy asked me why. And, I said, I called, I said, because Daddy wants to know. And, I called him, and he said, get the information and call him back. She said, no. Go to bed.

KYLE BIEDERMANN : Well, I didn't get a chance to talk to your sisters, did I?

KYLA: No.

KYLE BIEDERMANN : See. I get to talk to all of you every night. So, did you think the police took me in to jail?

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KYLE BIEDERMANN : I need to get to talk to you girls every day.

KYLA: Did Momma get in trouble?

KYLE BIEDERMANN : Well, I don't know. We'll have to ask her. It also says, if you go out of Gillespie County, (inaudible) she's got to let me know when she takes you. And, that, that's why she wouldn't let me (inaudible)—

KYLA: Dana True.

KYLE BIEDERMANN : —and so, she wouldn't tell me that, either. That's against the court order, also.

KYLA: Can you come with us?

KYLE BIEDERMANN : Kyla, it's not a good thing for me to be— I mean, I would love to go with you girls. But, Mommy doesn't want me to be there, and you know that.

KYLA: That doesn't matter. I want you to watch us do the bull, chase the calves and stuff.

8. **Audio Taped Transcript July 2001:**

AVIAN BIEDERMANN : If they're not going to Fiesta, Texas tomorrow, they need to come home.

KYLE BIEDERMANN : Okay. How about you take them to Grandma and Pappa's to spend the day.

AVIAN BIEDERMANN : I don't know. Why don't you (inaudible) think

about it?

KYLE BIEDERMANN : How about Wednesday? How about Thursday? Do I have to go to court, in a hearing, just to see the kids more? Instead of you lying about me not wanting the kids?

AVIAN BIEDERMANN : I didn't lie.

KYLE BIEDERMANN : Yeah. You guys lied, telling them that we didn't want to see the kids any more. I (audible) one day a week. That's not the case.

AVIAN BIEDERMANN : You're the one that came up with that.

KYLE BIEDERMANN : I want it just for 30 days. That was what that was for. 30 days, and you—

AVIAN BIEDERMANN : You're, hey, I didn't like, you're the one that came up with the plan.

KYLE BIEDERMANN : Okay. I'm going to court to get the kids more often. Do I have to go to court, or would you just let me see the children more often? Yes or no?

AVIAN BIEDERMANN : I already said, if you want to take the children to Fiesta, Texas tomorrow, that's fine.

KYLE BIEDERMANN : Okay. I'm going to court. You already know that. We're already going to court, just so I can see the kids, 'cause you're a fucking asshole.

AVIAN BIEDERMANN : I'm a what?

KYLE BIEDERMANN : You heard me. You won't even let me see the girls.

AVIAN BIEDERMANN : That is not true.

AVIAN BIEDERMANN : Discuss it with my lawyers.

KYLE BIEDERMANN : Oh, it's for your lawyers' kids? Oh, my goodness. I didn't know that they were the lawyers' kids. Oh, gosh. I'm glad that they care more about your children than you do. I'm glad to hear that. We're going to court, so I can see the kids more. And, that's because you're making me. 'Cause, you don't care about the kids. All you want to do is hurt me. You're not gonna hurt me very long. And, the truth be know, we

have to go to court, just so I can see them. The kids know that. You don't have to hide it from them. You can't hide it from them.

AVIAN BIEDERMANN : Give me a hug.

EMILY: My tummy hurts.

AVIAN BIEDERMANN : your tummy hurts? Come here. I'll give you something for it. Bye, I love you.

KYLA: Bye.

AVIAN BIEDERMANN : Try not to get your ears wet.

(End of tape)

9. **Audio Taped Transcript of July 6, 2001:**

KYLE BIEDERMANN : Uh-huh. Well, I mean, have you been home? I've called twice.

KYLA: Yeah.

KYLE BIEDERMANN : (inaudible)

KYLA: It did.

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KYLA: Um, yeah. Um, hold just a minute. I need to tell Momma something. Momma, Momma? I need to go to the bathroom. Okay. Momma doesn't like, Momma doesn't know that, you know, when I talked to you, when you were (inaudible)?

KYLE BIEDERMANN : Uh-huh.

KYLA: Yeah? Well, um, Tara was down there. When she was about to come upstairs, but she heard me talking to you about the thing. She had heard me talking to you, and telling you what I was telling you, and she got pretty mad. And, and she got (inaudible), too. And, um, so, she sent one of my sisters up to come get me, um, to open up presents and cake.

KYLE BIEDERMANN : Uh-huh.

KYLA: Yeah? Um, well, Momma made up a new rule that we cannot go, um, out of the room where a grown-up is in.

10. **Audio Taped Transcript of August 3, 2001:**

EMILY: You glad I remembered to call you back?

KYLE BIEDERMANN : Yes, I am. Very, very much. Very, very, very much. You know, 'cause I, see, I didn't talk to you girls for a couple of days, and I kept calling, calling, calling. And, I never got a call back.

EMILY: You kept doing what?

KYLE BIEDERMANN : I kept calling you girls and leaving messages. And, I never got a call back. So, I didn't know what was going on.

EMILY: Well, Momma says that we can't answer the phone, without her permission.

KYLE BIEDERMANN : Well—

EMILY: She says that if we do, she's gonna spank us (inaudible).

KYLE BIEDERMANN : Oh, that's not right, Emmy. Oh, Emmy. You girls are big enough. You don't need to get spanked.

EMILY: No, that's what we get all the time. Every single day.

KYLE BIEDERMANN : Well, what if somebody asked you questions about that? What would you say? What if the, what if the court asked you something? What would you say?

EMILY: Um, a question?

KYLE BIEDERMANN : Yeah. What if they ask you if you still, if you got (inaudible), what would you say?

EMILY: I would say that Momma switch, spank us every day.

KYLE BIEDERMANN : And, what would they spank you for?

EMILY: What?

KYLE: What would they spank you for?

EMILY: Calling on the phone without permission, when you say that we can, you know.

11. **Audio Taped Transcript of August 3, 2001:**

KYLE: Yeah, wait 'til you see it. It's really good. I just thought I'd get you today, and then we could, you know, then you could be at Ace with me, tomorrow, to help me do the garage sale. I, there's no reason for you not to be able to come over here, except that Mommy doesn't want you to see me. That's it. Well, we just have to wait, huh, precious?

KYLA: Dad, you know what?

KYLE: What?

KYLA: Momma's watching movies for child discipline.

KYLE BIEDERMANN : Oh, gosh. I guess she needs to learn something. She's just spanking you girls for—

KYLA: Nothing.

KYLE BIEDERMANN : —for no reason. And, that's not good, is it?

KYLA: Uh-huh. I think the child discipline is telling her that.

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KYLE BIEDERMANN : Well, why don't you bring the video with you? Okay? Put it in your bag. And, I'll watch it and see what I think.

KYLA: Okay. 'Cause, we don't know. We just know she's watching it, when we are not around.

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KYLE BIEDERMANN : Well, I mean, that's, the Bible says that, you know. I don't know. The problem is that you girls shouldn't be spanked when Mommy (inaudible), like not letting you come to the phone.

KYLA: Uh-huh.

KYLE BIEDERMANN : Or, when you come, not letting you see your dad.

KYLA: Uh-huh.

KYLE BIEDERMANN : That's bad.

KYLA: Well.

KYLE BIEDERMANN : Oh, my precious.

LOREN: I want to talk to Daddy.

KYLE BIEDERMANN : Well, no matter what, Kyla, I'm gonna see you Sunday morning. Okay?

12. **Audio Taped Transcript of August 3, 2001:**

KYLE BIEDERMANN : Hi, precious. How'd you know it was me.

KYLA: 'Cause the phone says who it is.

KYLE BIEDERMANN : Oh, it does?

KYLA: Yeah.

KYLE BIEDERMANN : That's why Mommy doesn't answer 'cause she knows it me.

KYLA: Yeah.

KYLE BIEDERMANN : How are you girls going? I haven't talked to you for a couple of days.

KYLA: Fine.

KYLE BIEDERMANN : What did you girls do yesterday?

KYLA: We went swimming.

KYLE BIEDERMANN : Where'd you go.

KYLA: (indiscernible) Johnson's.

KYLE BIEDERMANN : Uh-huh.

KYLA: But we went really late.

KYLE BIEDERMANN : What do you mean?

KYLA: We went really late and Mom's was being mean. I asked her if we could come by grandma and papa's and get the goggles. And she said, we're not making any stops. And so Loren put the top of her bathing suit in the clothes that we gave you. And Mamma spanked me for giving the clothes to you.

KYLE BIEDERMANN : Uh-huh. Oh God. You could have come and gotten

them. They're in my truck.

KYLA: I know.

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KYLE BIEDERMANN : I'll take you to the bus.

KYLA: You will?

KYLE BIEDERMANN : Yes.

KYLA: Mamma said we weren't going to get to see you.

KYLE BIEDERMANN : That's not the truth. I'll pick you all up at eight o'clock in the morning, and I'll take you to the bus.

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KYLE BIEDERMANN : Now, can you believe that Mommy wasn't going to let me see you girls at all this weekend. It's my weekend. Did you know it's my weekend to see you girls. Now, I'm not going to see you at all.

Why would she do that Kyla?

KYLA: Well, Daddy, I wanted choir.

KYLE BIEDERMANN : I know, I'm glad you got choir.

But why can't I see you tonight or tomorrow? Or tomorrow?

KYLA: Tonight and tomorrow? Or today?

KYLE BIEDERMANN : Yes. You know, if she's going to take me days, then why can't she give me another day?

KYLA: Why is she taking it? How could she do that? Why can't you?

KYLE BIEDERMANN : Because her attorneys are ... They don't care about you girls. They just want to hurt me. That's it. They're good at it. They don't care one bit about what you girls want. They are trying to keep you away from me.

KYLA: We won't let them.

KYLE BIEDERMANN : And they're doing everything they can to do that, Kyla.

KYLA: Well, how come they say that they love us?

KYLE BIEDERMANN : Well, what do you think?

Call and see ... You call and say, hey listen, if you love me so much, let me see my daddy for a day. What do you think they'll say?

KYLA: I don't know – They'll laugh at me.

KYLE BIEDERMANN : Okay.

KYLA: And then they'll say, huh, well, that's the court's decision.

KYLE BIEDERMANN : It's not the court's decision.

KYLA: Mommy says it is.

KYLE BIEDERMANN : Yeah, well, she's just telling you a lie, Kyla.

It's up to Mommy, completely. Nobody tells her that she can't let – She has control of you girls when she has you, and she can do whatever she wants. She can let me have you. She can let you go with me if she wants. It's all up to her. The court doesn't tell her that she can't. All right.

When it was Mother's Day. Remember when it was Mother's Day.

KYLA: Mother's Day.

KYLE BIEDERMANN : Mother's Day, was Sunday. That was my day. I let you go with Mommy, didn't I.

KYLA: Why?

KYLE BIEDERMANN : Because that was the right thing to do.

The court said it was my day. But does that mean that I can't let Mommy have you? Of course not. It's up to me. It's my day, and if I want to let you go with Mommy, I can let you go with Mommy.

Mommy has given you to me one other day. We went someplace and she gave me – she let you come early, right? A few times.

KYLA: Yes.

KYLE BIEDERMANN : She decided to let me come early.

KYLA: Yeah.

KYLE BIEDERMANN : The court says at five o'clock I can pick you up. But Mommy let you go early. Why? Because it's up to Mommy. The court doesn't tell her you can't do that. The court didn't tell me I can't let you girls go with Mommy on Mother's Day. But I let you go. 'Cause that's the right thing to do. The court will never tell us you can't do anything.

KYLA: Mommy has gotten worse.

KYLE BIEDERMANN : I know she has, Kyla. I'm just gonna – You know. I'm sorry that you that you girls have to go through this. I'm just sorry you have to go through it.

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KYLA: Mamma, daddy wants to talk to you.

AVIAN BIEDERMANN : Yes.

KYLE BIEDERMANN : Avian, I don't want any arguments or complaints, but you get the girls through the fourth, which is Saturday and I get them on the 5th.

AVIAN BIEDERMANN : No, you only get two of them on the 5th.

KYLE BIEDERMANN : I'm picking all up at eight o'clock in the morning. I talked to my attorney. And I'll have the police there if you don't give them to me. You call your attorney if you want to change. Okay, let me talk to the girls. All four at eight o'clock in the morning.

13. **Audio Taped Transcript of August 3, 2001:**

EMILY: That's not fair, everybody else has dads.

KYLE BIEDERMANN : Well, you tell Mommy. She's the one keeping you away from me, Emmy. There's nothing I can do about it. It's her and her attorneys. They don't want you to see me. They won't let me pick you up at eight o'clock in the morning on Sunday, did you know that?

EMILY: Why?

KYLE BIEDERMANN : Because they don't want me to see you

Mommy just told me she won't let you come at eight o'clock in the

morning. She said, I can't see you and Kyla at all. I said, uh-huh, I'm going to pick them up at eight o'clock in the morning. So don't let her trick you Emmy. I'm picking you up at eight o'clock in the morning, no matter what. If not, I don't get to see you at all. And for some reason, I don't know why, Emmy, they don't want you to see me.

EMILY: Well, why don't you then tell the court?

KYLE BIEDERMANN : I did tell the court, but I can't do anything about it. They played some mean tricks, Emmy.

EMILY They're not going to do anything about it?

KYLE BIEDERMANN : I can't do anything about it.

EMILY: No, the court.

KYLE BIEDERMANN : You just have to ask Mommy why. You ask Mommy why. She won't tell you. But the bottom line is, they didn't want you to see me, and so they tricked the court and made it out so that – made sure that I wasn't going to get a chance to see you.

EMILY: That's not fair.

KYLE BIEDERMANN : I know. I'm sorry, Emmy. But I'll see you Sunday morning, Okay?

EMILY: Everyone else gets to see their dad almost every day.

KYLE BIEDERMANN : Well, tell Mommy that. Ask her if maybe I can take you out for ice cream or something. Okay?

EMILY: Okay.

KYLE BIEDERMANN : Okay. All right.

EMILY: Okay.

KYLE BIEDERMANN : Okay. Well, Emmy, I got to go.

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KYLA: I want you to call.

KYLE BIEDERMANN : Well, I'll be happy to do anything Kyla. Just remember, I'll pick you up at eight o'clock in the morning, and don't let

Mommy fool you that I'm not.

KYLA: Why is she always trying to lie to us that we're not.

KYLE BIEDERMANN : 'Cause –

14. Audio Taped Transcript of August 8-10, 2001:

KYLE BIEDERMANN : But, you can also tell Mommy, Mommy, please don't spank Loren. And, uh, if she does, you can call your attorney.

EMILY: Attorney?

KYLE BIEDERMANN : You can call the, the, there's a, that man, Kurt Rudkin, that we sat around the room and talked to, that one day at Grandma and Pappa's.

EMILY: Yes, but we don't know his phone number.

KYLE BIEDERMANN : I'll give you the phone number, if you want to call. But, you can tell Mommy, if you spank, that, you know, tell that you'll call your attorney, if you have to. Okay? I don't want you to get in trouble Emmy. I'm sorry. Oh boy. I just love you girls. I know God's gonna take care of you girls, no matter what, Emmy.

EMILY: Okay.

KYLE BIEDERMANN : God's watching every second.

EMILY: If I find Momma, before she spanks Loren, I'll tell her that you wanted to talk to her.

KYLE BIEDERMANN : Yeah.

EMILY: And to call her.

KYLE BIEDERMANN : That's right.

EMILY: But, if it doesn't work?

KYLE BIEDERMANN : Then, say, then, then you're gonna, then Daddy's gonna call the attorney.

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KYLE BIEDERMANN : Okay. Lord Jesus, we just thank you that you love

Kyla and Emmy and Loren and Dana True so much, and that you've promised to protect them in every way, Lord. And, we just pray that, that they will in no way have any anger or bitterness toward Mommy, even though Mommy may not be being nice to them—

EMILY: Well, I'll tell her, that, uh, that you're gonna call your attorney—

KYLE BIEDERMANN : Uh-huh.

15. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : Oh, girls I am so sorry. Oh, girls, I just can't believe this. Do you remember anything else that you talked to the guy about, yesterday, precious?

KYLA: Uh, no, not really.

KYLE BIEDERMANN : Did he ask you anything about, um, watching movies that were, you know, about, um, babies being born?

KYLA: Yes. He asked me that question, um, uh, asked me, did you ever watch a movie of a baby being born, with one of your parents? And, I said, um, yes, but it wasn't with my parents. It was with Heather, I said, my cousin.

KYLE BIEDERMANN : Uh-huh.

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KYLE BIEDERMANN : Yeah. Anything else, Kyla, that he asked for?

KYLA: No, except for the potty stuff, you know. And, I told him about that.

KYLE BIEDERMANN : About, the only thing you knew about was the kitten?

KYLA: Yeah. I said the kitten peeing on me, uh, because it was me, it was my fault. But, um, and then, my other cat, um, peeing on my sleeping bag.

KYLE BIEDERMANN : Was he trying to ask if it, did he think it was me that peed on you?

KYLA: Well, actually, um, I don't know what, I told him about the cats. And then, I told him the one time, one morning, I told him that, when you were, you used to live with us, we used to all get up in the morning. We used to all come on you and Momma's bed, and when we did, um, Loren came, and she got sick. And, she threw up.

KYLE BIEDERMANN : Uh-huh.

KYLA: Sort of on you. I told him that.

KYLE BIEDERMANN : Yeah. Okay, precious. All right, precious. Well, what kind of doughnuts do you want?

KYLA: Um, let me see. Uh, do they still have tiger tails?

KYLE BIEDERMANN : Yeah. Want a tiger tail?

KYLA: I guess.

KYLE BIEDERMANN : Okay.

KYLA: And, if they don't, um, I, I don't know what I want.

KYLE BIEDERMANN : Well, don't let Mommy know I'm coming.

KYLA: Okay.

KYLE BIEDERMANN : And then, you guys just look out the window. It's gonna take me about 15 minutes to get them. Okay?

KYLA: Okay.

16. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : Hi.

KYLA: Um, you know, right after I called you, I went to the beauty shop. I sat down, and the phone rang, and it was you.

KYLE BIEDERMANN : Oh, good, Kyla.

KYLA: 'Cause, you got right back, right, you got back right after I called you.

KYLE BIEDERMANN : Well, good.

KYLA: Did she, did, um—

KYLE BIEDERMANN : Linda told me you called.

KYLA: Yeah?

KYLE BIEDERMANN : I just wanted to make sure I got you. I didn't think I'd get you on the phone. So, is Mommy taping these phone calls?

KYLA: How am I supposed to know? I think so.

KYLE BIEDERMANN : Well, you know, is there a record button, or some kind of beeping thing on the phone, that you have to (inaudible)—

KYLA: I don't know.

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KYLA: Okay, Daddy? I think I told the guy about, um, what Momma and, I know I told the guy that, um, that, about the, them telling us it's our fault that ya'll have arguments. And, I told him that me and Laura think, feel like, um, uh, we, it's our fault that the divorce came up.

KYLE BIEDERMANN : Uh-huh. But, that they're making you feel that way?

KYLA: Yeah.

KYLE BIEDERMANN : Okay.

KYLA: I told them all the bad things about Momma, and I told them (inaudible).

17. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : Next summer. A whole school year, when you're off for the summer, again, and you're—What's the little beeping noise?

DANA TRUE: I don't know.

KYLE BIEDERMANN : That must be the, that must be the tape. They're probably taping our conversations, girls.

DANA TRUE: What?

KYLE BIEDERMANN : Who's on the phone, right now?

DANA TRUE: Me.

KYLE BIEDERMANN : Just you?

DANA TRUE: Yes.

KYLA: And me, and Kyla.

KYLE BIEDERMANN : You hear that little beeping noise? The beep-beep?

KYLA: Yes.

KYLE BIEDERMANN : That must be the, that they're taping it.

* * * * *

KYLA: —she told us that, um, she told us that Daddy shouldn't be coming by, 'cause it makes, 'cause we know it makes trouble. And, she said, I don't come by and see you, when, um, when you're with Daddy. And, I said, yeah, that's because you don't love us that much.

KYLE BIEDERMANN : Oh. Oh, my precious. Well, that's because she sees you, all the time. I don't get to see you. And, that's because I want to see you, and she really doesn't need to, 'cause she sees you all the time.

KYLA: Well, that's what I told her, because she doesn't love us.

KYLE BIEDERMANN : Yeah. And, what'd she say?

KYLA: She said, no that is not true.

KYLE BIEDERMANN : Yeah, well. See, Kyla, you understand what's going on. That's what's so good, Kyla. You can see right through all that garbage. You can see right through it. And, uh, and, if you girls want to see me, that's what's important. That's what you girls want, not what she wants. Right?

KYLA: Uh-huh.

KYLE BIEDERMANN : Well, I appreciate you girls very much. I appreciate it very much. All right, girls, why don't you try to give me a call a little bit later, Okay?

KYLA: Okay.

18. **Audio Taped Transcript of August 16, 2001:**

KYLA: It was good. Where did you go?

KYLE BIEDERMANN : Huh? (inaudible)

KYLA: (inaudible) And, that's it?

KYLE BIEDERMANN : That's it.

KYLA: (inaudible) Why? We still haven't convinced them yet? (inaudible)

KYLE BIEDERMANN : I've got (inaudible)

KYLA: Why haven't we? We've told them everything that Momma does wrong. There's so many things bad. And, everything you do right. And, we still haven't convinced them?

KYLE BIEDERMANN : Not yet, Kyla.

KYLA: Why? What more do they need?

* * * * *

KYLA: On Monday, and then Momma gets us again? Why? I feel—

KYLE BIEDERMANN : Well, it's gonna be like this for a while. I'm sorry.

KYLA: Have we come to a point where I can go down to pharmacy and call you?

KYLE BIEDERMANN : I don't thing (inaudible)

KYLA: Why?

KYLE BIEDERMANN : Kyla, I can't talk about this (inaudible), okay?

KYLA: Why?

KYLE BIEDERMANN : I just can't.

KYLA: What's wrong? Do they know that you're thinking it?

KYLE BIEDERMANN : Well, no. But, they tape everything you say, Kyla. So (inaudible)

KYLA: Who does?

KYLE BIEDERMANN : (inaudible) I'll talk to you tomorrow, okay? I'll come and get you tomorrow, and (inaudible)—

APPENDIX 7

**Actions of Kenneth Kyle Biedermann Violating "Emergency Sui Sponte Order"
of August 20, 2001**

Emergency Sui Sponte Order in pertinent part states:

THEREFORE, the Court does make and enter the following Orders which are effective immediately for the protection of said minors and for their best interest.

- (1) The original Petitioner, AVIAN ANN BIEDERMANN, the natural Mother, shall be the sole temporary managing Conservator of the four minor children with all the power, authority, duties, etc., as provided by law.
- (2) Until further Orders of the Court, the natural Father, KENNETH KYLE BIEDERMANN, the original Petitioner, shall have no contact or communication, in any manner, way, form or fashion with said minors until further Orders of this Court. Moreover, said Father shall not go, for any reason, within one hundred (100) yards of the original Petitioner's residence and/or where a reasonable person would anticipate said minors being at such time, including schools, churches, etc.
- (3) Any and all Orders and agreements heretofore made in this case, not in conflict with this Order, or that does not violate [sic] the intent or spirit of this Order, shall remain in full force and effect.
- (4) The Father shall not contact and/or attempt to contact, in any manner, the Mother, except by or through her attorney, the attorney ad litem in this case, Dr. Jack Ferrell or such party the said Dr. Jack Ferrell shall designate in writing.

Kyle Biedermann has directly violated the Emergency Sui Sponte Order on at least four instances:

1. On September 10, 2001, during the school's open house, Dana True's teacher, Sharon Holmes, told Avian Biedermann that Kyle Biedermann has called the school to talk to her. Kyle Biedermann attempted to convince Sharon Holmes to allow Kyle Biedermann to see and speak with Dana True while she is at school.
2. On or about September 14, 2001, Kyle Biedermann threatened Avian Biedermann's brother-in-law, insisting that he convince Avian Biedermann to let him speak with the children. Avian Biedermann's brother-in-law works at Ace Hardware for Kyle Biedermann.

**Actions of Kenneth Kyle Biedermann Violating "Emergency Sui Sponte Order"
of August 20, 2001**

Emergency Sui Sponte Order in pertinent part states:

THEREFORE, the Court does make and enter the following Orders which are effective immediately for the protection of said minors and for their best interest.

- (1) The original Petitioner, AVIAN ANN BIEDERMANN, the natural Mother, shall be the sole temporary managing Conservator of the four minor children with all the power, authority, duties, etc., as provided by law.
- (2) Until further Orders of the Court, the natural Father, KENNETH KYLE BIEDERMANN, the original Petitioner, shall have no contact or communication, in any manner, way, form or fashion with said minors until further Orders of this Court. Moreover, said Father shall not go, for any reason, within one hundred (100) yards of the original Petitioner's residence and/or where a reasonable person would anticipate said minors being at such time, including schools, churches, etc.
- (3) Any and all Orders and agreements heretofore made in this case, not in conflict with this Order, or that does not violate [sic] the intent or spirit of this Order, shall remain in full force and effect.
- (4) The Father shall not contact and/or attempt to contact, in any manner, the Mother, except by or through her attorney, the attorney ad litem in this case, Dr. Jack Ferrell or such party the said Dr. Jack Ferrell shall designate in writing.

Kyle Biedermann has directly violated the Emergency Sui Sponte Order on at least four instances:

1. On September 10, 2001, during the school's open house, Dana True's teacher, Sharon Holmes, told Avian Biedermann that Kyle Biedermann has called the school to talk to her. Kyle Biedermann attempted to convince Sharon Holmes to allow Kyle Biedermann to see and speak with Dana True while she is at school.
2. On or about September 14, 2001, Kyle Biedermann threatened Avian Biedermann's brother-in-law, insisting that he convince Avian Biedermann to let him speak with the children. Avian Biedermann's brother-in-law works at Ace Hardware for Kyle Biedermann.

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

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JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization:
Personal Injury - Civil Trial-Family Law -
National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 114

September 6, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and Kenneth Kyle Biedermann and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children, In the 216th Judicial District of Gillespie County, Texas*

Dear Mrs. Meyer:

Pursuant to Texas Rules of Appellate Procedure 34.6(b)(2) enclosed for filing is the original of the hearing transcript of the Telephonic Conference in the captioned cause dated August 22, 2001. Please indicate the filing of these reporter's record by file stamping a copy of this cover letter and returning the same to me via in the stamped self-addressed envelope provided. ✓ 9-14-01 m.m.

Very truly yours,


JOHN NICHOLS
For the Firm

JN/dh
Enclosure

cc: Scott F. Monroe (w/encl)
Kurtis S. Rudkin (w/encl)
Pamela K. Bergman
Avian Ann Biedermann

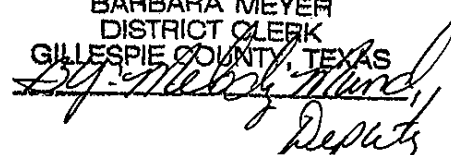
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CM-RRR Z 271 988 069

FILED
At 10:47 O'clock A.M.

SEP 14 2001

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BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Deputy

LAW OFFICES of JOHN NICHOLS
Chevron Tower

1301 MCKINNEY STREET SUITE 3636
HOUSTON TEXAS 77010

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JOHN NICHOLS,

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National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 114

September 20, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children, In the 216th Judicial District of Gillespie County, Texas*

Dear Mrs. Meyer:

Please take the indicated action:

1. DESIGNATION OF ATTORNEY IN CHARGE

- File among papers in the above cause.
- File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger.
- A filing fee is enclosed in the amount of \$_____.
- Present to Judge for signature and/or hearing date.
- Demand for jury.
- By copy hereof, those persons whose names appear below are being notified of this filing.

Very truly yours,


John Nichols

For the Firm

WILSON CARRUTHERS

DELLINGER CARRUTHERS

JN:MEVIN:MEAGAN

Enclosure

cc: Scott F. Monroe

(w/encl)

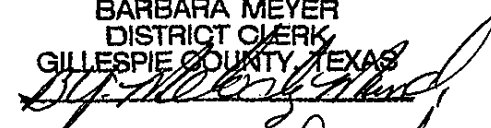
Kurtis Rudkin

(w/encl)

FILED
At 11:20 o'clock A.M.

SEP 24 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS


Deputy

Z 271 988 924

Z 271 991 822

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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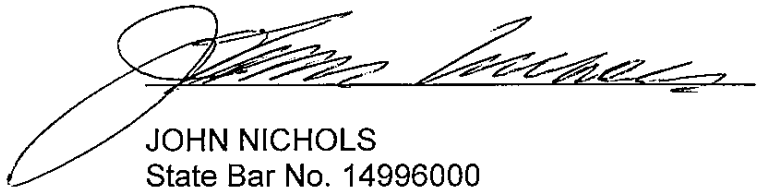
IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216TH JUDICIAL DISTRICT

DESIGNATION OF ATTORNEY IN CHARGE

AVIAN ANN BIEDERMANN, Petitioner, designates JOHN NICHOLS as the attorney in charge in accordance with rule 8 of the Texas Rules of Civil Procedure. All communications from the Court or other counsel with respect to this suit shall be sent to the attorney in charge.



JOHN NICHOLS
State Bar No. 14996000
Chevron Tower
1301 McKinney, Suite 3636
Houston, Texas 77010
713-654-0708 (telephone)
713-654-0706 (fax)

Attorney for AVIAN ANN BIEDERMANN

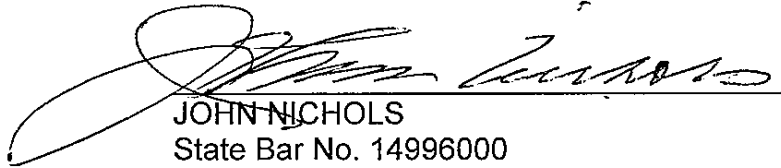
FILED
At 11:20 o'clock A.M.

SEP 24 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer
Deputy

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party
in accordance with the Texas Rules of Civil Procedure on September 20, 2001.



JOHN NICHOLS
State Bar No. 14996000
Chevron Tower
1301 McKinney, Suite 3636
Houston, Texas 77010
713-654-0708 (telephone)
713-654-0706 (fax)

Attorney for AVIAN ANN BIEDERMANN

OFFICE OF THE CLERK
COUNTY CLERK
HARRIS COUNTY, TEXAS

0.0100K

0.0100K



DISTRICT CLERKS:

KERR COUNTY - LINDA UECKER
830/792-2281
KIMBLE COUNTY - ELAINE CARPENTER
915/446-3353
MASON COUNTY - BEATRICE LANGEHENNIG
915/347-5253
McCULLOCH COUNTY - MACKYE JOHNSON
915/597-0733
MENARD - ELSIE MASERANG
915/396-4682

EMIL KARL PROHL
DISTRICT JUDGE
198TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: LINTON TOMLIN
208 BALL DRIVE
KERRVILLE, TEXAS 78028
830/257-2105

September 19, 2001

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main, Room 204
Fredericksburg, TX 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMAN

Dear Barbara:

Please file the enclosed Document in the above-referenced court file. Copies of the Order have been sent to Scott Monroe, Kurt Rudkin, John Nichols and Pam Bergman.

Very truly yours,

Stephen B. Ables
216th District Judge

SBA:mfb
Enclosures

FILED
At 11:18 O'clock A.M.

SEP 24 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Deputy

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

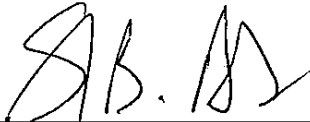
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

* IN THE DISTRICT COURT
*
*
*
*
*
* OF GILLESPIE COUNTY, TEXAS
*
*
*
*
* 216TH JUDICIAL DISTRICT

ORDER SETTING HEARING

Hearing on Respondent's Motion to Vacate Emergency Sui Sponte Order, Motion for Further Temporary Orders, and Motion to Compel Production of Discoverable Material is hereby set for the 1st day of October, 2001, at 9:00 A. M. in the District Courtroom of Bandera County, Texas. Respondent is responsible for transporting the file from Gillespie County and taking the same to Bandera County for the purposes of this hearing. The estimated length of time for this hearing is one (1) hour.

SIGNED this the 19 day of Sept., 2001.



JUDGE PRESIDING

cc: Mr. Scott F. Monroe 257-7079
Mr. Kurt Rudkin 830/249-6315
Mr. John Nichols 718/654-0706
Ms. Pam Bergman

FILED
At 11:19 o'clock A.M

SEP 24 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer
Deputy

HP LASERJET 3150
PRINTER/FAX/COPIER/SCANNER

AD HOC BROADCAST REPORT FOR
DISTRICT JUDGE
1 830 792 2294
SEP-19-01 3:42PM

JOB	PHONE NUMBER/ADDRESS	START TIME	PAGES	MODE	STATUS
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32	9,,17136540706,617....	9/19 3:42PM.....	1/ 1	BC	COMPLETED <i>Nichols/Bergman</i>

COPY
mailed 9/12 to
-dcp-

POLLARD & MONROE
ATTORNEYS AT LAW
951 MAIN STREET
KERRVILLE, TEXAS 78028

TELEPHONE: (830) 896-7500
TELECOPIER: (830) 257-7079
E-MAIL: tpollard@ktc.com
E-MAIL: smonroe@ktc.com

L. W. POLLARD (1902-1981)
THOMAS W. POLLARD
SCOTT F. MONROE

September 11, 2001

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006

Ms. Pamela K. Bergman
Attorney at Law
1301 McKinney, Ste. 3636
Houston, Texas 77010

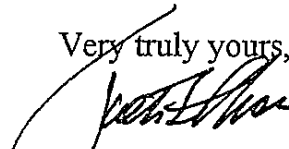
RE: Cause No. 9284; In the Matter of the
Marriage of Avian Ann Biedermann and Kenneth
Kyle Biedermann and In the Interest of Kyla Rae
Biedermann, Emily Laine Biedermann, Loren
Noel Biedermann and Dana True Biedermann,
Minor Children

Dear Ms. Bergman & Mr. Rudkin:

I have contacted the Court Coordinator and she advises me that Judge Ables is available to hear my pretrial motions on either October 1st in Bandera or on October 9th in Boerne. Please advise me as to which of these dates is preferable to you and I will cause this matter to be set at that time. If I do not hear from you within three (3) business days from the date of this letter then I will ask the Court Coordinator to set this hearing at my convenience.

Thank you very much for your cooperation in this regard.

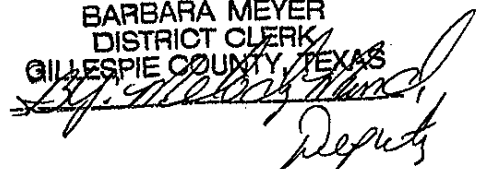
Very truly yours,


Scott F. Monroe

FILED
At 11:20 O'clock A.M.

SEP 24 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS


Deputy

GILLESPIE COUNTY CLERK
DISTRICT CLERK
SFM/scp

cc:
Mr. Kyle Biedermann

01000K
GILLESPIE

LAW OFFICES of JOHN NICHOLS

Chevron Tower
1301 MCKINNEY STREET SUITE 3636
HOUSTON TEXAS 77010
Telephone: (713) 654-0708
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JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization-
Personal Injury-Civil Trial-Family Law
Member National Board of Trial Advocacy-Civil Trial.

Writer's Direct Dial:
(713) 654-0708 Ext. 114

September 25, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

OVERNIGHT MAIL DELIVERY

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Please take the indicated action: 1. **Motion for Continuance and Resetting of Temporary Hearing**

- (X) File among papers in the above cause.
- (X) File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger.
- () A filing fee is enclosed in the amount of \$_____.
- () Present to Judge for hearing date and signature.
- () Demand for jury.
- (X) By copy hereof, those persons whose names appear below are being notified of this filing.

Very truly yours,


John Nichols
For the Firm

JN:dh

Enclosure

FILED
At 9:57 O'clock AM

SEP 25 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By Jani Davis
Chief Deputy

cc. Scott Monroe

Via Fax: (830) 257-7079; Via E-mail: smonroe@ktc.com

CM-RRR 7000 1670 0004 0652 6196

Kurtis S. Rudkin

Via Fax: (830) 249-6315

CM-RRR 7000 1670 0004 0652 6158

Dr. Jack Ferrell

Via Fax: (210) 499-5825

CM-RRR 7000 1670 0004 0652 6141

Avian Ann Biedermann

1001

No. 9284

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
AVIAN ANN BIEDERMANN	§	
AND	§	
KENNETH KYLE BIEDERMANN	§	
	1.	GILLESPIE COUNTY, T E X A S
AND IN THE INTERESTS OF	§	
KYLA RAE BIEDERMANN,	§	
EMILY LAINE BIEDERMANN,	§	
LOREN NOEL BIEDERMANN AND	§	
DANA TRUE BIEDERMANN, MINOR	§	
CHILDREN	§	216TH JUDICIAL DISTRICT

Motion for Continuance and Resetting of Temporary Hearing

Avian Ann Biedermann requests a reset of the hearing currently set for October 1, 2001, in Bandera, Texas to October 5, 2001 at 9:00 a.m. in Boerne, Texas because:

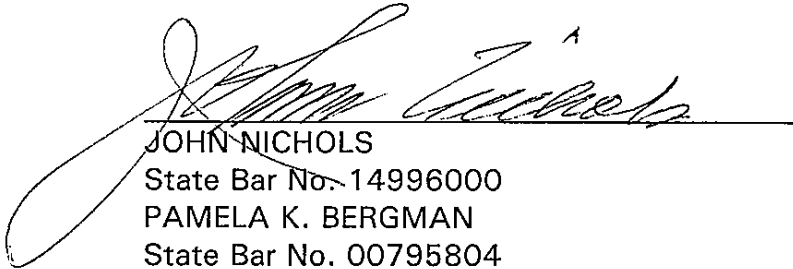
1. John Nichols, lead counsel for Avian Ann Biedermann, has a hearing that morning in the 309th Judicial District Court of Harris County, Texas in the case entitled "*In the Matter of the Marriage of Mark Alan Frantz and Lisa Marie Swalm Frantz and in the Interest of Kristin Annabelle Frantz, Grace Marie Frantz, Rachel Elizabeth Frantz, and Caroline Lee Frantz, Minor Children*" on a motion to obtain mental health records, a motion for mental examination, a motion for continuance from the present October 1, 2001 trial setting. The Frantz case is a child custody and property case pending before the Honorable Eva Guzman presiding, telephone number (713) 755-6234.
2. Pamela K. Bergman, co-counsel with John Nichols, has jury duty on October 1, 2001 at 8:00 a.m. The jury summons is attached as Exhibit A.
3. At 2:00 p.m. on October 1, 2001, John Nichols' expert witness, Dr. Richard Pesikoff (a psychiatrist) will be deposed in the case of Cartwright v. Cartwright which is currently set for trial on October 29, 2001 with jury selection on October 25, 2001. This deposition represents the last of multiple resets. No other counsel is available in John Nichols' office to take this deposition and the client is insisting that John Nichols personally be present for the deposition.

FILED
At 9:50 o'clock AM

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By Jan R. [Signature]
Chief Deputy

4. John Nichols has determined from Dr. Ferrell's office that Dr. Ferrell can not be available on October 1, 2001 at 9:00 a.m. due to a prior conflict. Dr. Ferrell is the agreed to and court appointed mental health professional in this matter. Dr. Ferrell has previously seen the parties and their children as well as Avian Biedermann's sisters and Kyle Biedermann's extended family.
5. Due to either mistake or inadvertence new counsel for Kyle Biedermann, Scott Monroe, failed to communicate with or ascertain whether or not there was any conflict in scheduling with John Nichols office for October 1, 2001 and ascertain a mutually convenient date.
6. John Nichols has communicated with Mr. Monroe by telephone on Monday, September 24, 2001, that the problems stated in 1 through 5 above and that John Nichols, Pamela K. Bergman, Kurt Rudkin, Avian Ann Biedermann, and Dr. Jack Ferrell can be available in Boerne, Texas on October 5, 2001 at 9:00 a.m. for Kyle Biedermann's motion to lift or set aside Judge Sherrill's temporary order.
7. Avian Biedermann, through counsel, requests the court to hear this matter by telephone in lieu of a personal appearance pursuant to the Texas Rules of Judicial Administration 7(a)(6)(b) and *Gulf Coast Inv. Corp. v. Nasa 1 Bus. Ctr.* 754, S. W. 2d 152, 153 (Tex. 1998).
8. This motion for continuance and reset is made so that justice may be done and not for delay only.
9. Avian Ann Biedermann, through counsel, requests this court to continue this matter from its October 1, 2001 setting in Bandera, Texas to October 5, 2001 at 9:00 a.m. in Boerne, Texas when all parties, attorneys, and the court appointed mental health professional can be present and allow telephonic testimony by non party witnesses if same be necessary for Kyle Biedermann and Avian Ann Biedermann.

LAW OFFICES OF JOHN NICHOLS



JOHN NICHOLS

State Bar No. 14996000
PAMELA K. BERGMAN
State Bar No. 00795804
Chevron Tower
1301 McKinney, Suite 3636
Houston, Texas 77010
Telephone: (713) 654-0708
Fax: (713) 654-0706

Attorney for Avian Ann Biedermann

FILED
At _____ O'clock _____ M

~~SEP 27 2001~~

**BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS**

STATE OF TEXAS

§

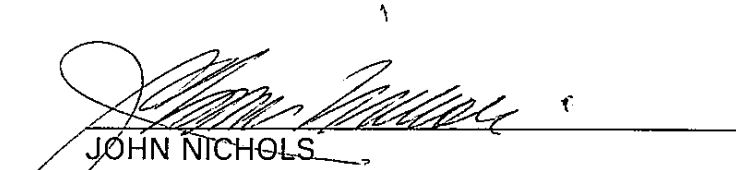
§ KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HARRIS

§

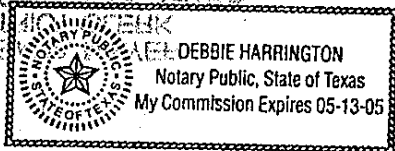
Before me the undersigned authority personally appeared John Nichols, who upon his oath did state:

"I am John Nichols, lead counsel for Avian Ann Biedermann. I am licensed to practice law by the Supreme Court of Texas and my license to practice law in the State of Texas is currently active. I have personal knowledge of the facts stated in the foregoing motion and they are true and correct.



JOHN NICHOLS

Signed on the 26th day of September, 2001.





NOTARY PUBLIC, STATE OF TEXAS

FILED

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on September 25, 2001.

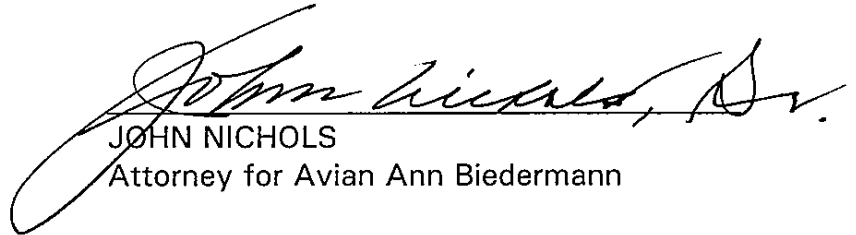

JOHN NICHOLS
Attorney for Avian Ann Biedermann

EXHIBIT A

OFFICIAL JURY SUMMONS

For information regarding jury service call (713) 755-6392
 24 hour, 7-day information including automatic reset

Fax: (713) 755-4899
 Online: [Http://www.hcdistrictclerk.com](http://www.hcdistrictclerk.com)
 E-mail: jury@dco.co.harris.tx.us

Riding Metro free to jury duty is easy. Please present summons to driver on date of summons only for free ride to jury service.
 For Metro information, call 713.635.4000 or visit web site www.hou-metro.harris.tx.us.



HC06948806

BERGMAN, PAMELA KAY
 2842 BELLEFONTAINE
 HOUSTON TX 77025-1610

65-1-441

JUROR # 1764-01



IMPORTANT-PLEASE READ: DEAR PROSPECTIVE JUROR: YOU ARE HEREBY SUMMONED TO APPEAR FOR JURY SERVICE ON THE DATE & TIME SPECIFIED BELOW:

Jurors will pass through metal detectors. Doors close 15 minutes after the assigned time.
 Jurors not present by that time must reschedule.

Date: OCT 1 2001
Time: 8:00 A.M.
Place: 1019 Congress Avenue
Downtown Houston

Charles Bacarisse, District Clerk
 1019 Congress, Houston, Texas 77002

Tommy Thomas, Sheriff
 Harris County Texas

Important: Please read carefully all information on the front and back of this form. Answer all questions below. Bring entire summons with you to court. Please print legibly. You are to appear promptly as instructed by this summons. If you have a special need or disability you are encouraged to notify the court immediately concerning requests for reasonable accommodation.

PLEASE TYPE OR PRINT IN BLACK INK --- JUROR QUESTIONNAIRE

Detach Here

HC06948806



COMPLETE ONLY ONE SIDE OF SUMMONS IN BLACK INK.
 BRING THE ENTIRE FORM WITH YOU.

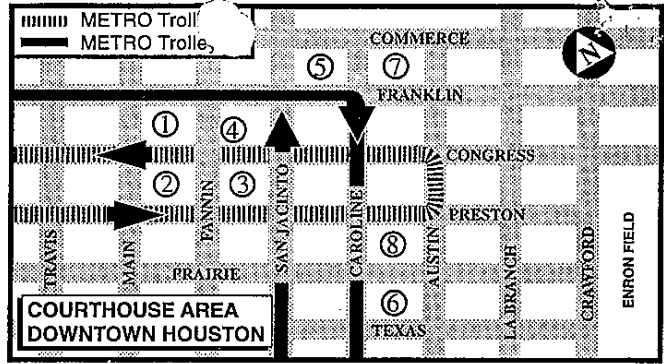
THE FOLLOWING JUROR QUESTIONNAIRE IS MANDATED BY GOVERNMENT CODE SECTION 62.0132.

JUROR# 1764-01		<input type="checkbox"/> Male <input type="checkbox"/> Female	Race (required by State Law):	Age:	Date of birth: 01/25/1954
Name & Home Address: BERGMAN, PAMELA KAY 2842 BELLEFONTAINE HOUSTON TX 77025-1610					
Mailing Address (if different from Home):		City	Zip:	TDL#	
Home Phone:		County of residence:		Have you ever been accused, complainant or witness on a criminal case? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Have you ever sustained any accidental bodily injury requiring medical attention? <input type="checkbox"/> Yes <input type="checkbox"/> No		If yes, what type?		Please check the highest level of education completed:	
Have you ever served on a civil jury? <input type="checkbox"/> Yes <input type="checkbox"/> No		Have you ever served on a criminal jury? <input type="checkbox"/> Yes <input type="checkbox"/> No		U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Your Occupation:		Work Phone:		Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced	
Your Employer:		How Long?			
Spouse's Name:		Spouse's Occupation:			
Spouse's Employer:		How Long?			
I CERTIFY THAT ALL ANSWERS ARE TRUE AND CORRECT.				Number of children	
Signature _____				Age range: From ____ To ____ years	

LEGEND TO MAP

1. One Congress Plaza (Jury Assembly Room)1019 Congress
2. Administration Building.....1001 Preston
3. Civil Courthouse.....301 Fannin
4. Family Law Center.....1115 Congress
5. Criminal Justice Center.....1201 Franklin
6. Anderson Clayton Building.....1310 Prairie
7. Annex '22' (County Jail).....1301 Franklin
8. Annex "2".....1302 Preston

Riding METRO FREE to jury duty is easy!
 Present this jury summons for one free round trip ride on any METRO METRO-LIFT bus service only on the date shown on the jury summons. Most downtown Metro bus service connects to Metro's trolley routes A and D to the Jury Assembly Room. For more information, call Metro at 713.635.4000 or visit their web site at www.hou-metro.harris.tx.us.



JUROR'S RIGHTS AND RESPONSIBILITIES

Right to Reemployment: A private employer may not terminate the employment of a permanent employee because the employee serves as a juror. An employee whose employment is terminated in violation of this Section is entitled to return to the same employment that the employee held when summoned for jury service if the employee, as soon as practical after release from jury service, gives the employer actual notice that the employee intends to return. (Civil Practice and Remedies Code, Section 122.001).

Failure to Answer Summons and Penalties: A person who fails to comply with this summons is subject to a contempt action punishable by a fine of not less than \$100 nor more than \$1,000 (Government Code, Section 62.0141). Additionally, a person shall be fined not less than \$10 nor more than \$100 if he: (1) fails to attend court in obedience to the notice without reasonable excuse; or (2) files a false claim of exemption from jury service. (Government Code, Section 62.111).

Proper clothing required: All persons entering the courtroom should be dressed in clothing reasonably befitting the dignity and solemnity of the court proceedings (e.g., shorts, tanktops, or t-shirts not permitted).

Exempt or disqualified: You do not need to appear in person if you are exempt or not qualified for jury service. To claim an exemption or report your disqualification you must complete the following form below, sign it and mail or personally bring it immediately to the address printed on the front of this summons. You may also fax your exemption/disqualification to: 713.755.4899.

To reschedule: please call 713.755.6392 or visit our web site: www.co.harris.tx.us/jury.

IF CLAIMING EXEMPTIONS OR DISQUALIFICATIONS, COMPLETE IN BLACK INK AND MAIL TO ADDRESS BELOW OR FAX TO 713.755.4899.

GENERAL QUALIFICATIONS FOR JURY SERVICE (Gov't Code, Section 62.102)	EXEMPTIONS FROM JURY SERVICE* (Gov't Code, Section 62.106)
<p>To serve as a juror you must meet qualifications. You must:</p> <ol style="list-style-type: none"> 1. <input type="checkbox"/> be at least 18 years of age; 2. <input type="checkbox"/> be a citizen of this state and a resident of the county in which you are to serve as a juror; 3. <input type="checkbox"/> be qualified under the Constitution and laws to vote in the county in which you are to serve as a juror; 4. <input type="checkbox"/> be of sound mind and good moral character; 5. <input type="checkbox"/> be able to read and write; tiene que saber leer y escribir; 6. <input type="checkbox"/> not have served as a juror for six days during the preceding three months in the county court or during the preceding six months in the district court; 7. <input type="checkbox"/> not have been convicted of theft or any felony; and 8. <input type="checkbox"/> not be under indictment or other legal accusation of a misdemeanor theft, felony theft or any other felony charge <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Charles Bacarisse, District Clerk 1019 Congress, Jury Assembly Room Houston, Texas 77002</p> </div> <p align="center" style="font-size: 1.2em; font-weight: bold;">HC06948806</p>	<p>You may be excused from jury service if:</p> <ol style="list-style-type: none"> 1. <input type="checkbox"/> you are 70 years of age or older; 2. <input type="checkbox"/> you have legal custody of a child or children younger than 10 years of age and service on the jury would require leaving the child or children without adequate supervision; 3. <input type="checkbox"/> you are a student at a public or private high school; 4. <input type="checkbox"/> you are enrolled and attend college; 5. <input type="checkbox"/> you are an officer or an employee of the senate, the house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government; or 6. <input type="checkbox"/> you are the primary caretaker of a person who is an invalid unable to care for himself or herself. (This exemption does not apply to health care workers). 7. <input type="checkbox"/> you have been summoned for service in a county with a population of at least 250,000 and you have served as a petit juror in the county during the three-year period preceding the date you are to appear for jury service. If you have performed jury service since September 27, 1999 you may claim this exemption. (This exemption DOES NOT APPLY to Federal and Municipal court jury service.) I performed jury service on _____ and wish to claim this exemption. <p><small>* You are not required to claim an exemption. It is your choice. * Business reasons are NOT lawful excuses.</small></p> <p align="right" style="font-size: 1.2em; font-weight: bold;"> <i>Barbara Meyer</i> BARBARA MEYER DISTRICT CLERK GLESPIE COUNTY, TEXAS </p> <p align="center" style="font-size: 1.2em; font-weight: bold;">Juror Summons # 1764-01</p>

I DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT I AM

EXEMPT because of the reason checked above.

DISQUALIFIED because of the reason circled above.

Date: _____ Signature: _____

FILED

SEP 26 2001

AT 5:58 O'CLOCK AM

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

Telephone: (713) 654-0708

Fax: (713) 654-0706

JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization-

Personal Injury-Civil Trial-Family Law

Member National Board of Trial Advocacy-Civil Trial.

Writer's Direct Dial:
(713) 654-0708 Ext. 114

September 25, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Z 271 988 927

*I SPOKE WITH SECRETARY
FOR JOHN NICHOLS 9-26-01.
SHE WILL GET HEARING DATE
FROM BECKY AND OVERNIGHT
FROM DADER SETT.*

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann AN DADER SETT.
Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine To HER.
Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor
Children, In the 216th Judicial District of Gillespie County, Texas*

Dear Mrs. Meyer:

Please take the indicated action: 1.

Brief in Support of Emergency Sua Sponte
Order

*WHEN WE RECEIVE ORDER SETT.
FROM BECKY - WE SHOULD ISSUE
CITATION ON MOTION FOR ENF.*

2.

Motion for Enforcement of Temporary
Restraining Order, Mediated Agreement on
Temporary Orders, and Temporary Orders

*AND ATTACH
NOTICE OF HEAR*

*9-26-01
JON*

- (X) File among papers in the above cause.
- (X) File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger.
- () A filing fee is enclosed in the amount of \$_____.
- (X) Present to Judge for hearing date and signature.
- () Demand for jury.
- (X) By copy hereof, those persons whose names appear below are being notified of this filing.

Very truly yours,

John Nichols
John Nichols
For the Firm

FILED

At 9:59 O'clock AM

SEP 26 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
*By John Nichols
Chief Deputy*

JN
Enclosures

cc.w/encls.: Scott Monroe
Kurtis S. Rudkin

Z 271 988 925
Z 271 988 926

LAW OFFICES of JOHN NICHOLS
Chevron Tower
1301 MCKINNEY STREET SUITE 3636
HOUSTON TEXAS 77010
Telephone: (713) 654-0708
Fax: (713) 654-0706

JOHN NICHOLS,
Board Certified-Texas Board of Legal Specialization-
Personal Injury-Civil Trial-Family Law
Member National Board of Trial Advocacy-Civil Trial.

Writer's Direct Dial:
(713) 654-0708 Ext. 114

September 26, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

OVERNIGHT MAIL DELIVERY

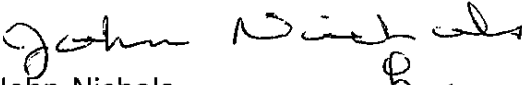
Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

It has come to my attention that my secretary neglected to notarize the affidavit on the Motion for Continuance sent to you yesterday. Enclosed please find a revised page 3 of Motion for Continuance and Resetting of Temporary Hearing, which I resigned and which has been notarized. Please insert this revised page 3 in the Motion for Continuance.

By copy hereof, those persons whose names appear below are being notified of this filing.

Very truly yours,

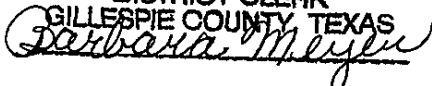

John Nichols
For the Firm

FILED
At 9:45 O'clock A M

JN:dh
ENCLOSURE
GILLESPIE COUNTY TEXAS
DISTRICT CLERK
BARBARA MEYER

SEP 27 2001

cc. Scott Monroe Via Fax: (830) 257-7079;
Kurtis S. Rudkin Via Fax: (830) 249-6315
Dr. Jack Ferrell Via Fax: (210) 499-5825
Avian Ann Biedermann

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS


FILED

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

Telephone: (713) 654-0708

Fax: (713) 654-0706

JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization-
Personal Injury-Civil Trial-Family Law

Member National Board of Trial Advocacy-Civil Trial.

Writer's Direct Dial:
(713) 654-0708 Ext. 114

September 27, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

OVERNIGHT MAIL DELIVERY

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Enclosed please find an Order Resetting Hearing Upon Agreement of the Parties. Please present this order to the Judge for his signature and thereafter return a conformed copy to my office in the self-addressed stamped envelope enclosed.

*Original
nailed
to Judge
Able
9-24-01
lpm*

By copy of this letter and the enclosure all parties are being notified of my submitting this to you.

Very truly yours,

John Nichols

JOHN NICHOLS
For the Firm

JN:dh

Enclosure

cc. Scott Monroe *Via Fax: (830) 257-7079*
Kurtis S. Rudkin *Via Fax: (830) 249-6315*
Dr. Jack Ferrell *Via Fax: (210) 499-5825*
Avian Ann Biedermann

CHRISTINE GONZA, CLERK
DISTRICT CLERK
GILLESPIE COUNTY

FILED
At 11:15 O'clock A M

SEP 28 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer

POLLARD & MONROE
ATTORNEYS AT LAW

951 MAIN STREET
KERRVILLE, TEXAS 78028

L. W. POLLARD (1902-1981)
THOMAS W. POLLARD
SCOTT F. MONROE

TELEPHONE: (830) 896-7500
TELECOPIER: (830) 257-7079
E-MAIL: tpollard@ktc.com
E-MAIL: smonroe@ktc.com

September 28, 2001

Ms. Barbara Meyer
District Clerk
Gillespie County Courthouse, Ste. 204
101 W. Main Street
Fredericksburg, Texas 78624-3700

RE: Cause No. 9284; In the Matter of the
Marriage of Avian Ann Biedermann and Kenneth
Kyle Biedermann and In the Interest of Kyla Rae
Biedermann, Emily Laine Biedermann, Loren
Noel Biedermann and Dana True Biedermann,
Minor Children; In the District Court of Gillespie
County, Texas, 216th Judicial District

Dear Ms. Meyer:

Enclosed herewith please find and Original and one (1) copy of Motion to Strike Brief in Support of Emergency Sua Sponte Order, Response to Brief in Support of Emergency Sua Sponte Order (Subject to Motion to Strike Brief in Support of Emergency Sua Sponte Order), Motion for Sanctions for Abuse of Discovery Respondent's First Amended Original Answer And Counterclaim in connection with the above entitled and numbered cause.

Will you please file the Motions and return a file marked copy to our office in the enclosed self addressed, stamped envelope. ✓ 10-4-01 m.m.

FILED
At 11:37 o'clock AM

OCT 2 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By [Signature]

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

Telephone: (713) 654-0708

Fax: (713) 654-0706

JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization:
Personal Injury - Civil Trial-Family Law -
National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 114

September 27, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

CM-RRR 7001 1940 0003 4532 3660

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Petitioner requests a change in Petitioner's Brief in Support of Emergency Sua Sponte Order pursuant to Tex. R. Civ. P. 71. In the Brief the audio taped transcript was incorrectly labeled as a telephone conversation of the Biedermann children with Kenneth Kyle Biedermann. This misnomer of the transcript can be corrected by designating the coversation as an audio taped conversation of Kenneth Kyle Biedermann, the Biedermann children and Avian Biedermann that took place in person and not via the telephone.

Very truly yours,

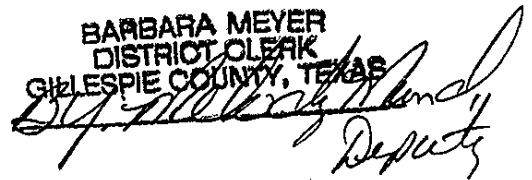

JOHN NICHOLS
For the Firm

JN/sr
Enclosure

FILED
At 11:36 O'clock AM

OCT 2 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS


Deputy

CM-RRR 7001 1940 0003 4532 3677
CM-RRR 7001 1940 0003 4532 3684

CC: Scott Monroe
Kurtis Ruckin
EVERETT WEAVER

FILED

No. 9284

FILED

At 11:38 O'clock A.M

IN THE MATTER OF
THE MARRIAGE OF

* IN THE DISTRICT COURT
*
* OCT 2 2001

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

*
* BARBARA MEYER
* DISTRICT CLERK
* GILLESPIE COUNTY, TEXAS

[Handwritten signature]
Deputy

AND IN THE INTEREST OF

* OF GILLESPIE COUNTY, TEXAS
*

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

*
*
*
*
* 216TH JUDICIAL DISTRICT

**MOTION TO STRIKE BRIEF IN SUPPORT OF EMERGENCY SUA SPONTE
ORDER**

TO SAID HONORABLE COURT:

Comes now, KENNETH KYLE BIEDERMANN, Respondent in the above styled and numbered cause and files this, his Motion to Strike Brief in Support of Emergency Sua Sponte Order, and for good cause would respectfully show the Court the following:

I.

On or about September 26, 2001, the Petitioner filed her Brief in Support of Emergency Sua Sponte Order. Respondent would show the Court that such a brief contains partial transcriptions of telephone conversations between the Respondent and his children. These conversations were illegally tape-recorded by the Petitioner, or persons acting on behalf of the Petitioner. Additionally, such tape recordings were withheld from discovery

improperly and without good cause. Reference is hereby made to Respondent's Motion for Sanctions for Abuse of Discovery and the factual recitations therein regarding the request for all audio tapes of the voice of the Respondent.

II.

The telephonic transcriptions contained in the Brief in Support of Emergency Sua Sponte Order are absolutely inadmissible in the trial of this cause as they were obtained illegally and they were withheld from discovery. It would be improper for the Court to even read these transcriptions until such time as the Court determines that they are admissible. In order for any taped transcription to be admissible, the offering party must authenticate such transcription, which would require the Petitioner to offer testimony as to its accuracy and the functioning of the recording device. Even then, there is no exception presently recognized under Texas law to allow an illegally recorded telephone conversation to be admissible as evidence. There is no recognized exception in the State of Texas for a custodial parent to be able to give implied consent to recording telephone conversations between the children and the non-custodial parent, nor does the State of Texas recognize any exception to illegally recorded telephone conversations recorded during a divorce proceeding.

III.

Because the Brief in Support of Emergency Sua Sponte Order contains the illegally recorded transcriptions, such brief should be stricken from the record, removed from the file and returned to the Petitioner. Such information should, under no circumstances, be made

public record as it is absolutely inappropriate for numerous reasons.

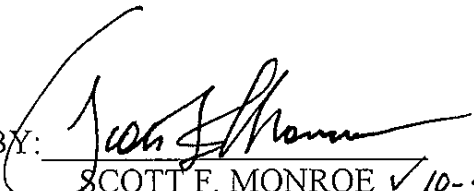
IV.

Respondent recognizes the broad discretion of Courts when it comes to dealing with children and the protection of their best interests. However, Respondent would submit to the Court that such discretion does not include nor extend to the consideration of evidence obtained illegally and in violation of both civil and criminal statutes. To permit such evidence would be to judicially create exceptions to the prohibitions created by the Texas legislature, which action is inappropriate.

WHEREFORE PREMISES CONSIDERED, Respondent respectfully prays that Petitioner's brief in support of Emergency Sua Sponte Order be stricken from the record and not considered by the Court for any purposes whatsoever.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (FAX)

BY: 
SCOTT F. MONROE ✓ 10-401
State Bar No. 14272700 m.m.
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I have this the 20th day of September, 2001, served a copy of the foregoing, Motion for Sanctions for Abuse of Discovery, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No.'s 7001 0320 0001 8968 2362 and 7001 0320 0001 8968 2379 in compliance with Rule 21 and Rule 21a of the Texas Rules of Civil Procedure as follows:

Mr. John Nichols
Attorney at Law
Law Offices of John Nichols
Chevron Tower
1301 McKinney Street, Ste. 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006


SCOTT F. MONROE

STATE OF TEXAS
COUNTY OF DALLAS
CLERK OF DISTRICT COURT

001 5

VI 0:00 PM
LITED

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

* IN THE DISTRICT COURT
*
*
*
*
*
* OF GILLESPIE COUNTY, TEXAS
*
*
*
*
* 216TH JUDICIAL DISTRICT

RESPONDENT'S FIRST AMENDED ORIGINAL ANSWER
AND COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Kenneth Kyle Biedermann, Respondent, and files this, Respondent's First Original Amended Answer and Counter-Claim and for good cause would respectfully show the Court the following:

I.

Respondent enters a general denial.

II.

Respondent objects to the assignment of this matter to an associate judge for a trial on the merits or presiding at a jury trial.

FILED
At 11:39 O'clock A.M

OCT 2 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer
Deputy

III.

Information required by section 152.209 of the Texas Family Code has been previously provided in this cause.

IV.

Respondent specially denies that it is not in the best interest in the children for Petitioner and Respondent to be appointed as Joint Managing Conservators.

V.

Respondent specially denies that Petitioner is entitled to a disproportionate share of the parties' estate.

VI.

Respondent specially denies that Petitioner is entitled to post-divorce maintenance.

VII.

Respondent specially denies that Petitioner is entitled to have a receiver appointed.

VIII.

Respondent specially denies that he has assaulted the Petitioner.

IX.

Respondent specially denies that he has ever intentionally, knowingly or recklessly caused bodily injury to the Petitioner.

X.

Respondent specially denies that he has ever threatened Petitioner with imminent bodily injury.

XI.

Respondent specially denies that he has ever caused either offensive or provocative physical contact with the Petitioner.

XII.

Respondent specially denies that he has ever intentionally inflicted emotional distress on Petitioner.

XIII.

Respondent specially denies that Petitioner has incurred any actual damages from any of the causes of action alleged above.

XIV.

Respondent specially denies that the corporation known as E. L. & H., Inc. d/b/a Biedermann's Ace Hardware is his alter ego.

XV.

Respondent owns certain separate property that is not part of the community estate of the parties, and Respondent requests the Court to confirm that separate property as Respondent's separate property and estate.

XVI.

Affirmative Defenses

1. With respect to the cause of action regarding intentional, knowing, or reckless bodily injury, as an affirmative defense, Respondent contends that at the time and place alleged in Petitioner's Original Petition, Respondent was acting in self defense; in

defense of his separate property; with consent of Petitioner, and/or of the defense of others.

2. With regard to the cause of action for threat of imminent bodily injury/offensive or provocative physical contact, as an affirmative defense, Respondent contends that at the time and place alleged in Petitioner's Original Petition, Respondent was acting in self defense; in defense of his separate property; with consent of Petitioner, and/or of the defense of others.
3. With regard to the cause of action for intentionally inflicted emotional distress, as an affirmative defense, Respondent would contend that at the time and place alleged in Petitioner's Original Petition, Respondent was acting in self defense; in defense of his separate property; with consent of Petitioner, and/or of the defense of others.

COUNTER- CLAIM

Counter-Respondent, Avian Ann Biedermann, may be served with citation by delivering a copy of the same to her residence at 110 West Hackberry, Fredericksburg, Gillespie County, Texas 78624.

XVII.

FACTUAL ALLEGATIONS

Over the past several months, Counter-Petitioner has had numerous telephone conversations with his children who are in the primary possession of the Counter-Respondent unknown to Counter-Petitioner, Counter-Respondent was tape recording all of Counter-Petitioner's telephone conversations with his children. In doing so, Counter-Respondent

illegally intercepted communications between Counter-Petitioner and his children through the use of an electronic or mechanical device. It is unknown to Respondent at the present time, how many different tape recordings were made but it is estimated to be somewhere between twenty (20) and fifty (50) separate tape recordings. Counter-Petitioner would show that such tape recordings were made without the consent of the Counter-Petitioner. In addition to recording telephone conversations between the Counter-Petitioner and his children, Counter-Petitioner would further show the Court that Counter-Respondent has used or divulged the information from the tape recordings to third parties, including, but not limited to her attorneys and relatives.

XVIII.

In accordance with Chapter 123 of the Texas Civil Practice and Remedies Code, Counter-Petitioner alleges a cause of action against the Counter-Respondent for each and every telephone conversation between Counter-Petitioner and his children which was recorded by the Counter-Respondent. For each such telephone conversation illegally recorded by the Counter-Respondent, Counter-Petitioner seeks to. Additionally, recover statutory damages in the amount of One Thousand and no/100 Dollars (\$1,000.00) per each illegally recorded telephone conversation, together with all actual damages which exceed One Thousand and no/ Dollars (\$1,000.00).

XIX.

As further and separate causes of action, Counter-Petitioner would show the Court that Counter-Respondent used or divulged information that she knew was obtained by the

interception of Counter-Petitioner's communication with his children to third parties, including but not limited to her attorneys and family members. Counter-Respondent committed a separate cause of action under the statute referred to above, for each time she used or divulged a communication. For each such instance, Counter-Petitioner should recover statutory damages in the amount of One Thousand and no/100 Dollars (\$1,000.00), together with all actual damages which exceed One Thousand and no/100 Dollars (\$1,000.00).

XX.

Counter-Petitioner would show the Court that the actions of the Counter-Respondent above were done with malice and with total disregard for the rights of the Counter-Petitioner and, because of the same, Counter-Petitioner should have and recover exemplary damages from the Counter-Respondent for each and every cause of action. The total amount of damages, statutory, actual, and exemplary, exceed the minimum jurisdiction of this Court.

XXI.

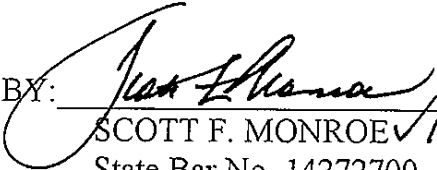
It has been necessary for Counter-Petitioner to employ the lawfirm of POLLARD & MONROE to protect his interest in this matter, Counter-Petitioner should be awarded any and all reasonable and necessary attorneys fees, costs and expenses incurred by him as a result of having to defend the actions under the Civil Practice and Remedy Code, said recovery of attorneys fees being mandatory under said statute. Counter-Petitioner would further request that any and all damages incurred by the Counter-Petitioner, either statutory, actual or exemplary, be off-set against any community estate, reimbursement, or attorneys

fees which the Counter-Respondent may be entitled to receive under the divorce proceeding.

WHEREFORE PREMISES CONSIDERED, Respondent and Counter-Petitioner respectfully prays that this Court will grant the divorce, name the parties as Joint Managing Conservators of the children, grant the permanent injunction prayed for by the Petitioner but require such injunction to be mutual, award Counter-Petitioner statutory, actual and exemplary damages for each separate cause of action committed by the Counter-Respondent under Section 123 of the Civil Practice and Remedies Code, that such damages be off-set against any community estate or attorneys fees recovered by Counter-Respondent in the divorce action and that Counter-Petitioner have any other relief, either general or special, either in law or in equity, to which Counter-Petitioner may show himself justly entitled.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (FAX)

BY: 
SCOTT F. MONROE ✓ 10-4-01
State Bar No. 14272700 m.m.
Attorney for Respondent &
Counter-Petitioner

CERTIFICATE OF SERVICE

I certify that I have this the 28th day of September, 2001, served a copy of the foregoing, Motion for Sanctions for Abuse of Discovery, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No.'s 7001 0320 0001 8968 2362 and 7001 0320 0001 8968 2379 in compliance with Rule 21 and Rule 21a of the Texas Rules of Civil Procedure as follows:

Mr. John Nichols
Attorney at Law
Law Offices of John Nichols
Chevron Tower
1301 McKinney Street, Ste. 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006


SCOTT F. MONROE

CITIZENS COMMUNITY LEAGUE
COMMUNITY CENTER
CIVIL RIGHTS CENTER

SEP 28 2001

NOV 01 09:00 AM '01
UNITED STATES

FILED
At 11:40 O'clock *AM*

IN THE MATTER OF
THE MARRIAGE OF

* IN THE DISTRICT COURT

OCT 2 2001

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

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BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer
Deputy

AND IN THE INTEREST OF

* OF GILLESPIE COUNTY, TEXAS

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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* 216TH JUDICIAL DISTRICT

MOTION FOR SANCTIONS FOR ABUSE OF DISCOVERY

TO SAID HONORABLE COURT:

Comes now, KENNETH KYLE BIEDERMANN, Respondent in the above styled and numbered cause and files this, his Motion for Sanctions for Abuse of Discovery and would respectfully show the Court the following:

I.

On or about the 4th day of May, 2001, Respondent caused to be served upon the Petitioner a Request for Production of Documents. Contained within this request for production was the following request:

- (3) Any and all recordings of Avian Ann Biedermann's husbands' voice or image in any form or format that she has in her possession and control or has relinquished to her attorney.

On or about the 6th day of June, 2001, the Petitioner filed her initial response to the

Request for Production. With regard to request no. 3 stated above, the Petitioner responded as follows:

Has been produced. Will supplement.

Accompanying this response were two (2) audio cassette tapes, one of which contained a tape recording of a conversation between the Petitioner and her children, while the children were in the possession of the Respondent on a family vacation in Florida. The second tape was blank.

II.

On or about the 14th day of June, 2001, Petitioner filed her first Supplemental Response to Request for Production. With respect to request no. 3, stated above, the Petitioner responded as follows:

All recordings previously produced.

Thereafter, on the 2nd day of July, 2001, Petitioner filed her second Supplemental Response to Request for Production. With respect to request no. 3 the Petitioner responded as follows:

All recordings previously produced.

No further supplemental responses were filed nor were any other audiotapes or videotapes ever produced by the Petitioner.

III.

This case was originally set for trial on August 14, 2001 before the Honorable Judge Charles Sherrill. When the Respondent appeared for trial, the Petitioner had in her

possession, (or actually in the possession of her attorneys), numerous audio cassette tapes, purportedly being tapes of conversations between the Respondent and his children. Additionally, the Petitioner, through her attorneys, produced at least one (1) transcription of an audio tape between the Respondent and his children. It was stated during the course of events on August 14th or 15th, by someone, that the Petitioner had been recording "all of the Respondent's telephone conversations with his children". If this is true, then there would be dozens and dozens of audio cassette tapes of telephone conversations between the Respondent and his children in the possession of the Petitioner or her attorneys.

IV.

On or about September 26, 2001, the Petitioner filed her Brief in Support of Emergency Sui Sponte Order. This "brief" contained transcriptions of telephone conversations between the Respondent and his children over "May 24th, 2001- May 25th, 2001", "undated 2001", "July, 2001", "July 6th, 2001", "August 3rd, 2001", "August 8th -10th, 2001", and "August 16, 2001". With the exception of the conversation from August 3, 2001, a transcript of which was produced during the court proceedings on August 14th & 15th, 2001, none of the recordings above have ever been acknowledged to have even existed, much less been produced, either in a form of a tape or a transcription, prior to the trial of the merits. Furthermore, it appears that there are numerous other recorded telephone conversations, some of which may be transcribed, and some of which may not be transcribed, that were not produced but more to the point, have yet to be even identified. Because of the existence of so many audio cassette tapes, and because the dates on some of

the tapes are prior to the discovery response dates, it is obvious that the responses of the Petitioner in her first and second supplemental responses, are, at the very least, incorrect and misleading. Not only are the responses incorrect, no attempt was made by the Petitioner to supplement these responses prior to the trial so as to make this evidence admissible, (assuming these recorded conversations could ever be made admissible). As a result, the Respondent was blindsided at the trial by the existence of additional tapes which had not been previously produced, nor which Respondent had been allowed to review. Additionally, transcriptions of at least one (1) tape was produced and presented to the Court at that time, and it is unclear as to whether the transcription is accurate or not, because the actual tape recording of the transcription has not been produced.

V.

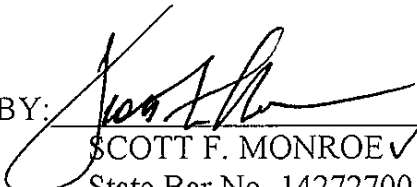
Respondent would suggest to the Court that the actions of the Petitioner is in blatant disregard for the rules of discovery. Furthermore, the tape recording by the Petitioner of telephone conversations between Respondent and his children is illegal and constitutes a criminal act in the State of Texas. There is no exception in the Penal Code for divorce proceedings or a custodial parent recording conversations between the children and the non-custodial parent. Furthermore, the recording of telephone conversations of third parties is actionable as a cause of action in the Civil Practice and Remedies Code. Because of the blatant disregard for not only the rules of discovery but for the rules of obtaining evidence, this Court should issue sanctions against the Petitioner which would exclude all evidence illegally obtained and inappropriately withheld from discovery by the Petitioner. Such

evidence should be stricken in all forms or fashions; and the Court should refuse to read any transcripts of any tape recordings or listen to any tapes of telephone recordings. Petitioner should be admonished as to the nature and consequences of her actions and Respondent should recover his reasonable attorneys fees for having had to present this motion.

WHEREFORE PREMISES CONSIDERED, Respondent respectfully prays that the Court will issue sanctions against Petitioner as requested above and that the Court take any other action the Court might deem appropriate under the circumstances.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (FAX)

BY: 
SCOTT F. MONROE ✓ 10-4-01
State Bar No. 14272700 m.m.
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I have this the 26th day of September, 2001, served a copy of the foregoing, Motion for Sanctions for Abuse of Discovery, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No.'s 7001 0320 0001 8968 2362 and 7001 0320 0001 8968 2379 in compliance with Rule 21 and Rule 21a of the Texas Rules of Civil Procedure as follows:

Mr. John Nichols
Attorney at Law
Law Offices of John Nichols
Chevron Tower
1301 McKinney Street, Ste. 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006


SCOTT F. MONROE

CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS

001

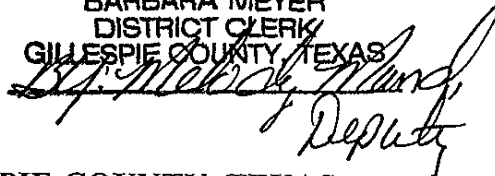
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No. 9284

FILED
At 11:41 O'clock A.M

OCT 2 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS



IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

* IN THE DISTRICT COURT
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* OF GILLESPIE COUNTY, TEXAS
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* 216TH JUDICIAL DISTRICT

RESPONSE TO BRIEF IN SUPPORT OF EMERGENCY SUA SPONTE ORDER
(SUBJECT TO MOTION TO STRIKE BRIEF IN SUPPORT OF EMERGENCY
SUA SPONTE ORDER)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, KENNETH KYLE BIEDERMANN, Respondent in the above styled and numbered cause and files this, his Response to Brief in Support of Emergency Sua Sponte Order (Subject to Motion to Strike Brief in Support of Emergency Sua Sponte Order), and for good cause would respectfully show the Court the following:

I.

In Respondent's Motion to Set Aside Emergency Sua Sponte Order, previously filed herein, Respondent is not questioning the authority of the trial court to enter an Emergency Sua Sponte Order with respect to children. Furthermore, Respondent is not questioning the authority of the trial court to issue an ex-parte Sua Sponte Order with respect to the children.

Respondent is complaining of the manner in which the Sua Sponte Order was issued and the form of the Sue Sponte Order, itself. Neither of these two points are addressed in Petitioner's Brief in Support of Emergency Sua Sponte Order.

II.

Petitioner cites the case of Page v. Sherrill 415 s.w. 2d 642(Tex 1967) as authority for the action of Judge Charles Sherrill in issuing the Emergency Sua Sponte Order. However, the facts in the Sherrill case cannot be compared to the facts in this case. In the Sherrill case, Judge Sherrill entered an Emergency Sua Sponte Order based on verified pleadings of one of the parties. In the case at hand, Judge Sherrill based his Emergency Sua Sponte Order on an improper ex-parte communication between Judge Sherrill and Dr. Jack Ferrell. Even in the cases cited within the Sherrill opinion, ex-parte orders were based on verified pleadings filed among the case papers. This would comply with Section 105.001 of the Texas Family Code. Because there are no verified pleadings on file that would suggest the necessity of this action and further because the Emergency Sua Sponte Order stems from an improper ex-parte communication between the Court and an expert witness, the order is voidable, if not void.

III.

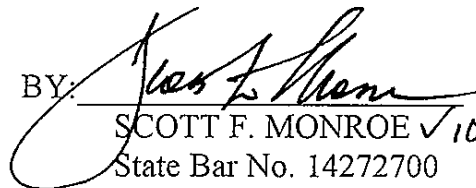
Secondly, the order issued by Judge Sherrill does not comply with the Texas Rules of Civil Procedure for restraining orders and injunctions in that it fails to state a time for the Respondent to appear before the Court to address the Court as required by Rule 680 of the Texas Rules of Civil Procedure. The Emergency Sua Sponte Order issued by Judge Sherrill could last for weeks or months, depending on the whim of the parties, or the availability of

the Court to conduct a hearing.

WHEREFORE PREMISES CONSIDERED, for the reasons stated above, the Emergency Sua Sponte Order signed by Judge Sherrill on August 21, 2001, should be set aside.

Respectfully submitted,

POLLARD & MONROE
951 Main Street
Kerrville, Texas 78028
(830) 896-7500
(830) 257-7079 (FAX)


BY: 
SCOTT F. MONROE ✓ 10-4-01
State Bar No. 14272700 mm
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I have this the 28th day of September, 2001, served a copy of the foregoing, Motion for Sanctions for Abuse of Discovery, on all parties, or their attorneys of record, by Certified Mail, Return Receipt Requested No.'s 7001 0320 0001 8968 2362 and 7001 0320 0001 8968 2379 in compliance with Rule 21 and Rule 21a of the Texas Rules of Civil Procedure as follows:

Mr. John Nichols
Attorney at Law
Law Offices of John Nichols
Chevron Tower
1301 McKinney Street, Ste. 3636
Houston, Texas 77010

Mr. Kurtis S. Rudkin
Attorney at Law
1414 E. Blanco Rd.
Boerne, Texas 78006


SCOTT F. MONROE

ON "ESSE COMMA" LEXYS
ELECTRONIC CERTIFICATE
SERIALIZED 09/28/01

09/28/01

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DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

October 1, 2001

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main, Room 204
Fredericksburg, TX 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Barbara:

Enclosed is an Order in the above-referenced matter. Please file the original and send copies of the Order to all appropriate parties.

Very truly yours,

A handwritten signature in black ink, appearing to read "SBA", written over a horizontal line.

Stephen B. Ables
216th District Judge

SBA:mf
Enclosures

FILED
At 11:38 O'clock A.M.

OCT 4 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

A handwritten signature in black ink, appearing to read "Barbara Meyer", written over a horizontal line.

Deputy

ORIGINAL

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

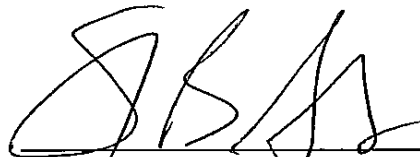
GILLESPIE COUNTY, T E X A S

216TH JUDICIAL DISTRICT

Order Resetting Hearing Upon Agreement Of The Parties

The Court, upon agreement of the parties, is resetting this matter, currently set for hearing at 9:00 a.m. on October 1, 2001 in ~~Bandera~~, Texas, to October 9, 2001 in Boerne, Texas at 9:00 a.m.

Signed on Oct. 1, 2001.



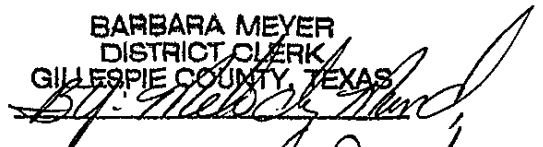
JUDGE PRESIDING

GILLESPIE COUNTY, TEXAS
DISTRICT CLERK
BARBARA MEYER

FILED
At 11:39 o'clock A.M.

OCT 4 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS


Deputy

ORIGINAL

HP LASERJET 3150
 PRINTER/FAX/COPIER/SCANNER

HOC BROADCAST REPORT FOR
 --STRICT JUDGE
 1 830 792 2294
 OCT-1-01 4:05PM

JOB	PHONE NUMBER/ADDRESS	START TIME	PAGES	MODE	STATUS
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216	9,, 17136540706, 617	10/ 1 4:04PM.....	1 / 1	BC	COMPLETED. <i>T. Russell</i>

No. 9284

OCT 9 2001

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYL A RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT
GILLESPIE COUNTY, TEXAS

BARBARA MEYER
DISTRICT CLERK
Barbara Meyer

GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

**Petitioner's Brief Regarding Audio Taping of Children's
Telephone Conversations With Parent**

Petitioner, Avian Ann Biedermann, files this brief in support of audio taping her children's telephone conversations [see attachments] with Respondent, Kenneth Kyle Biedermann.

1. Focus of Brief

This brief focuses only on the parent-child aspects of the divorce between Kenneth Kyle Biedermann and Avian Ann Biedermann. Petitioner, Avian Biedermann, audio taped telephone and in-person conversations of Respondent talking with Kyla Biedermann, Emily Biedermann, Loren Biedermann, Dana True Biedermann, and Avian Biedermann. This brief focuses on the audio taped conversations of Respondent with the four Biedermann children.

2. Good Faith Belief that Recording was in Children's Best Interest

Avian Ann Biedermann maintains that Kenneth Kyle Biedermann is subjecting the children to emotional abuse and manipulation by pressuring the children regarding the divorce proceedings and psychological evaluations.

Further, Avian Ann Biedermann maintains Kenneth Kyle Biedermann is alienating her from her children and compromising their physical and emotional well-being. The children have become cruel and hostile towards her. They engage in behavior contrary to their normal dispositions. Kenneth Kyle Biedermann has insulted Avian Ann Biedermann in front of the children. The children have repeated such insults

after speaking with their father, Respondent, on the telephone. Avian Ann Biedermann has observed them hide with the telephone in blatant acts of defiance. The girls state legal terms and knowledge of the divorce proceedings that they could not know without direct coaching.

Prior to Petitioner audio taping the telephone conversations, Kenneth Kyle Biedermann was observed on several occasions obtaining an erection when he picked up his daughters. Avian Ann Biedermann's sisters also witnessed this display of sexual arousal by Kyle Biedermann. During the first social study Kenneth Kyle Biedermann did not deny the accusation stating that he would obtain an erection when picking up his children. Avian Ann Biedermann began to notice outcries of sexual misconduct by the children from little comments they would make. Avian Ann Biedermann's sister also witnessed outcries by the children. Dana True Biedermann was sitting on Avian's sister's lap when Dana True told her she had a secret that she could not tell mommy or she would get in trouble. Dana True told Avian's sister that one time when daddy and she were staying at the cabin they forgot to wear their pajamas and daddy kissed her all night long. Avian Ann Biedermann began audio taping the children's telephone conversations with Kenneth Kyle Biedermann because of her great fears for the children's emotional and physical well-being.

Kenneth Kyle Biedermann has continuously interfered with Avian Biedermann's discipline of the children and repeatedly told the children that she is lying to them, thereby alienating her ability to maintain a relationship with the children. The children exhibit outraged disrespect to Avian Biedermann after they have talked with Respondent on the telephone. Avian Biedermann additionally asserts that Kenneth Kyle Biedermann has consistently failed to comply with the Court's Orders. Respondent has a blatant disregard for the girls' emotional well-being and this Court's proceedings.

Avian Biedermann is concerned for the emotional and physical well-being of her daughters. She began recording the children's telephone conversations with their father to determine whether Kenneth Kyle Biedermann was abusing, threatening, or manipulating their children.

3. Best Interest of the Child

The "best interest of the child" is always the primary consideration in determining questions of support of and access to a child. *Tex. Fam. Code* § 153.002 (conservatorship); § 153.252 (possession and access); and § 154.122 (support); *Davis v. Davis*, 794 S.W.2d 930 (Tex. App.—Dallas 1990, no writ). It has been stated that the best interest of the child is the backbone of American family law, when custody is an issue. *Yavapai-Apache Tribe v. Mejia*, 906 S.W.2d 152 (Tex. App.—Houston [14th Dist.] 1995, man. motion overr.).

Additionally, the best interest of the child, and not rules of pleading and practice, are the primary concern in child custody and support cases. *Cohen v. Sims*, 830 S.W.2d 285 (Tex. App.—Houston [14th Dist.] 1992, writ den'd). In determining child custody cases, the technical rules of pleading and practice need not be strictly followed: it is the best interests of the child that are paramount. *D ___ F ___ v. State*, 525 S.W.2d 933 (Tex. App.—Houston [1st Dist.] 1975, writ ref'd n.r.e.).

Some factors to consider in determining the best interest of the child are:

- (1) the emotional and physical needs of the child now and in the future,
- (2) any emotional and physical danger to the child now and in the future,
- (3) the parenting ability of the individuals seeking custody,
- (4) the stability of the home or proposed placement,
- (5) the acts or omissions of the parent that may indicate that the existing parent-child relationship is not a proper one, and
- (6) any excuse for the acts or omissions of the parent.

Holly v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976).

4. **Totality of the Circumstances**

Just as the best interest of the child shall always be the primary consideration of the court in determining questions of possession of and access to a child, the court must give deliberate thought to and weigh all the facts and circumstances that bear directly or indirectly on a child, including, but not limited to, present or future physical, mental, emotional, educational, social, disciplinary and moral welfare, well-being, stability, and developmental needs. *Fair v. Davis*, 787 S.W.2d 422 (Tex. App.—Dallas 1990, no writ). In determining the best interest of the child, the court must consider the circumstances of the parents. In a divorce suit, the trial court's findings of fact as to parents' emotional stability, good moral character, and possible superior home environment, supported the court's ultimate custody conclusion. See *Glass v. O'Hearn*, 553 S.W.2d 15 (Tex. Civ. App.—Fort Worth 1977, no writ). It is proper to consider the influences to which he or she may be subjected and the environment as it will affect his education and moral training and not just the question of food and clothing alone. *Sarosdy v. Sarosdy*, 297 S.W.2d 852 (Tex. Civ. App.—Dallas 1957, no writ).

5. **Parental Alienation Syndrome**

Parental Alienation Syndrome refers to a pattern of behavior that arises almost exclusively out of child custody disputes. It is a disorder in which children, programmed by the allegedly loved parent, embark upon a campaign of denigration of the allegedly hated parent.

- A. Alienating behaviors may arise when one parent becomes irrationally

angry, feels shamed or fears loneliness. Looking at parental alienation from this broader perspective may allow for more accurate detection as well as more reliable findings.

- B. A parent of questionable mental health might suffer profound damage to their self-esteem after a marital breakup and try to feel better by denigrating the other parent to the child. Some parents may engage in alienating behaviors to deflect attention from themselves, hoping their own personal imitations will not be discovered. The personality makeup of some parents is such that revenge seems like the only viable option in response to the feeling wounded by the divorce.

6. **Child Abuse**

Tex. Fam. Code Ann. § 261.001(1) (A) &(B) defines [child] abuse to include the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning.

Tex. Fam. Code Ann. § 104.006 provides as follows:

In a suit affecting the parent-child relationship, a statement made by a child 12 years of age or younger that describes alleged abuse against the child, without regard to whether the statement is otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside of the presence of the jury, the court finds that the time, content, and circumstances of the state provide sufficient indications of the statement's reliability and:

(1) the child testifies or is available to testify at the proceeding in court or in any other manner provided for by law; or

(2) the court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child.

7. **Dr. Jack Ferrell's Summary Report**

Dr. Jack Ferrell is the court approved psychological and child custody evaluator on this case. Dr. Ferrell has prepared a 16 page initial report which has been filed with

the court. In his report Dr. Ferrell states:

- C. He has evaluated Kyle and Avian Biedermann and the four Biedermann children. [p. 1]
- D. The evaluation period covered four months (April 17, 2001 to August 14, 2001). [p. 1]
- E. The evaluation consisted of:
 - 1. development of social history
 - 2. home visit evaluations
 - 3. the administration of psychological tests
 - 4. review of specific documents, including medical reports and other health care
 - 5. the CASA Report
 - 6. school records
 - 7. collateral reports and anecdotal data. [p. 1]
- F. Kyle Biedermann "did not fill out this form" when asked to describe his relationship with Kyla Biedermann, age 9. [p. 10]
- G. Kyla Biedermann related: "we" think mom has problems and then relates material or allegations reported by the father or suggested to her by him. She clearly is the father's biggest advocate and apparently discuss his feeling regarding the divorce often. [p. 10]
- H. Issues about the father sleeping nude with the children were also addressed and the Court Ordered that he not sleep with the children at all. He did not during the trip to Florida, but did permit one child each night to sleep in a bed right next to his in his room as a special treat. He reported that he did so because the children wanted to and they would have been unhappy if he had not. He failed to appreciate that perhaps this was not an altogether appropriate manner in which to address the Court's Order, nor was the children's desire sufficient to abdicate (minimally) his responsibility in this regard. He appears to at times push the envelope and may have difficulty in some areas with respect to boundaries, which does concern this examiner. [p. 14]

- I. Kyle Biedermann ... must cease and desist from further alienation of the children. [p. 16]

8. Authority for Audio Taping Children's Telephone Conversations with Parent

This matter is one of first impression for Texas State Courts. Texas has addressed the issue of spousal wiretapping, but has not considered the issue of vicarious consent. The doctrine of vicarious consent involves the parent or guardian's consent to allow the taping of minor children's telephone conversations. *Pollock v. Pollock*, 154 F.3d 601 (6th Cir. 1998); *Thompson v. Dulaney*, 838 F. Supp. 1535 (D. Utah 1993); *Silas v. Silas*, 680 So. 2d 368 (Ala. Civ. App. 1996); *Wagner v. Wagner*, 64 F. Supp. 2d 895 (U.S.D.C. Minn. 1999); *Campbell v. Price*, 2 F. Supp. 2d 1186 (E.D. Ark. 1998). The Courts that have addressed this issue have held that the consenting parent must have an objectively reasonable good faith belief that the taping is necessary. See *Pollock*, 154 F.3d 601; see also *Thompson*, 838 F. Supp. 1535; see also *Silas*, 680 So. 2d 368; see also *Wagner*, 64 F. Supp. 2d 895; see also *Campbell*, 2 F. Supp. 2d 1186.

This case can be distinguished from the numerous cases involving spousal wiretapping. In the spousal-wiretapping cases the main issue is the lack of any party's consent, thus violating Federal and State Wiretapping statutes. In this case, Petitioner has consented on behalf of her minor children (doctrine of vicarious consent) and Respondent has impliedly consented to the audio taping through his prior knowledge of the interception and his failure to timely raise an objection to the admissibility of the audio tapes.

A. The Federal Wiretapping Statute

The federal wiretap statute prohibits the interception and use of illegally intercepted communications. 18 U.S.C. § 2510.

Several exceptions to the general prohibition against the use of intercepts to the general prohibition against use of intercepted oral and wire communications exists. Section 2511(2)(d) of the federal statute provides that it is not unlawful for a person to intercept an oral or wire communication where this person is one of the parties to the communication or where one of the parties has given prior consent to such an interception. 18 U.S.C. § 2511 (2)(d).

The court in *Pollock v. Pollock* extended the consent exception in holding that a parent may vicariously consent on behalf of a minor child to the interception of a communication as long as the parent can demonstrate "a good faith, objectively reasonable basis for believing that it is necessary and in the best interest of the child." *Pollock*, 154 F.3d at 610; see also *Thompson*, 838 F. Supp. 1535; see also *Silas*, 680 So. 2d 368; see also *Wagner*, 64 F. Supp. 2d 895; see

also *Campbell*, 2 F. Supp. 2d 1186.

Courts have recognized another exception to the federal wiretapping statute. Conversations obtained in violation of the federal wiretapping statute have been held admissible for impeachment purposes. *Jacks v. State*, 394 N.E.2d 166 (1979).

The United States Supreme Court recently overturned the sanction provision of the federal wiretapping statute. *Bartnicki v. Vopper*, 2001 WL 530714 (U.S. 2001); see also 18 U.S.C. § 2511 (1). The federal wiretap statute no longer provides criminal sanctions for anyone who willfully intercepts, uses or discloses illegal oral or wiretap communications. *Bartnicki*, 2001 WL 530714.

In *the Anonymous* case, the father audio taped his eight year old little boy's conversations with the child's mother. *Anonymous v. Anonymous*, 558 F.2d 677 (2d Cir. 1977). The Court likened the audio taping to listening to the conversation on another extension, which is not prohibited by the federal wiretapping statute. The Court further found that the father's actions did not rise to the level of criminal conduct under the federal statute. *Anonymous*, 558 F.2d 677.

B. Texas State Statutes Forbidding Interception of Another's Conversation

Texas Civil Practice and Remedies Code applies only to interceptions of communications that are not consented to. In this case, the communications were audio taped with the consent of the primary custodian, Avian Ann Biedermann, on behalf of her minor children. The doctrine of vicarious consent is directly applicable to this case. Texas Civil Practice and Remedies Code sections 123.001 to 124.004, therefore, are not applicable in the case at hand.

The audio tapes of Kenneth Kyle Biedermann's telephone conversations with the minor Biedermann girls were not illegally intercepted. Respondent argues that the tapes were illegally intercepted because Kenneth Kyle Biedermann's permission was not obtained prior to the interception. Respondent cites Texas Civil Practice and Remedies Code, which creates a civil cause of action for a person whose communication is intercepted in violation of the statute. Tex. Civ. Prac. & Rem. Code §§ 123.001-124.004. Respondent also claims the "illegal" interception amounts to a felony. Texas Penal Code states: illegal interception or use or disclosure of the contents of the interception may be a felony. Texas Penal Code Ann. § 16.02. Since the interceptions themselves were not illegally obtained, Respondent does not have a civil cause of action against Petitioner and the commission of a felony has not occurred.

Purely verbal communications, which are not transmitted by wire or cable, are

not covered under the Texas statutes. Tex. Civ. Prac. & Rem. Code §§ 123.001-124.004; Texas Penal Code Ann. § 16.02.

Texas has recognized an exception for the admissibility of illegally intercepted telephone conversations. In *Cummings v. Jess Edwards*, the Court held illegally-taped telephone conversations may be used for impeachment purposes, provided the recording satisfies a seven-point test for admissibility. *Cummings v. Jess Edwards*, 445 S.W.2d 767, 773 (Tex. Civ. App.—Corpus Christi 1969, writ ref'd n.r.e.). This seven-point test requires that the offering party demonstrate:

1. that the recoding device was capable of taking testimony;
2. that the operator of the device was competent;
3. the authenticity and correctness fo the recording;
4. that changes, additions, or deletions have not been made;
5. the manner of the preservation of the recording;
6. the identity of the speakers; and
7. that the testimony elicited was voluntarily made without any kind of inducement.

Cummings, 445 S.W.2d at 773.

If a party to the communication consents to the interception or if a person who is a party to the communication intercepts the communication it is not a violation of the state or federal statutes. Court recognized the general exception to the blanket prohibition of spousal wiretaps when the intercepting party is a party to or has consented to the interception. *Kotrla v. Kotrla*, 718 S.W.2d 853, 855 (Tex. App.—Corpus Christi, 1986, writ ref'd n.r.e.). The state interception of communications statute does not prohibit this type of interception so long as one party consents to the taping. *Kotrla v. Kotrla*, 718 S.W.2d 853, 855 (Tex. App.—Corpus Christi, 1986, writ ref'd n.r.e.). In this case one party has consented to the interception. Petitioner, Avian Ann Biedermann consented on behalf and in representation for her minor children. Only one party to the conversation needs to consent for the audio taping under both the federal and state statutes. This criteria is met in this case. One party has consented under the doctrine of vicarious consent. Therefore, consent is not an issue in this case.

C. The Issue of Consent in Wiretapping Cases

Court recognized the general exception to the blanket prohibition of spousal wiretaps when the intercepting party is a party to or has consented to the interception. *Kotrla*, 718 S.W.2d at 855.

Section 2511(2)(d) of the federal statute provides that it is not unlawful for a person to intercept an oral or wire communication where this person is one of

the parties to the communication or where one of the parties has given prior consent to such an interception. 18 U.S.C. § 2511 (2)(d).

The court in *Pollock v. Pollock* extended the consent in holding that a parent may vicariously consent on behalf of a minor child to the interception of a communication as long as the parent can demonstrate "a good faith, objectively reasonable basis for believing that it is necessary and in the best interest of the child." *Pollock v. Pollock*, 154 F.3d 601, 610 (6th Cir. 1998).

In *PV International Corporation v. Turner*, the court held that if a spouse wants a third party, then that interception could be actionable and that recording should be inadmissible. 778 S.W. 865 (Tex. 1989). This case can be distinguished from the *PV International Corporation* case. In this case, the Petitioner was audio taping conversations her children had with Respondent. The Petitioner was not audio taping Respondent's telephone conversations with other people without Respondent's knowledge. Petitioner consented to the audio taping on behalf of her minor children because the children had been exhibiting unusual hostile behavior towards Petitioner immediately following their conversations with Respondent on the telephone.

In *Collins* the husband recorded the wife on three separate instances. *Collins v. Collins*, 904 S.W.2d 792 (Tex. Civ. App.—Houston [1st Dist.] 1995), writ granted, 923 S.W.2d 569 (Tex. 1996). The husband was never a party to any of the recorded conversations and the wife did not know or consent to the recording of her conversations. The *Collins* case is very different than the case before this Court. In this case Petitioner, Avian Ann Biedermann, is not recording Respondent's telephone conversations with anyone else but the minor daughters. The oldest child in this case is nine-years-old and is unable to consent to the audio taping for herself. She is too young to understand all of the ramifications involved in this case, so the Petitioner consented for her. The Petitioner only consented to the audio taping after she had a reasonable good faith belief that the taping was necessary. In the later audio tapes, Kenneth Kyle Biedermann impliedly consented to the interceptions because he knew and acknowledged that the conversation was being taped.

D. The Doctrine of Vicarious Consent

Courts across the country have held that a parent or guardian's consent is sufficient to allow the taping of the minor children's phone conversation, even if the parent or guardian was not a party, if the parent or guardian had an objectively reasonable good faith belief that the taping was necessary. *Pollock*, 975 F. Supp. 974; *Thompson*, 838 F. Supp. 1535; *Silas*, 680 So. 2d 368; *Campbell*, 2 F. Supp. 2d 1186; *Wagner*, 64 F. Supp. 2d 895.

As long as a parent has the good faith belief that recording is in the child's best

interest, the parent may vicariously consent on behalf of the child to the recording of the child's cell phone conversations. *Pollock*, 154 F.3d 601.

The custodial parent's good faith concerns for the minor child's best interest may, without liability under the Federal Wiretapping Statute, empower the parent to intercept the child's conversations with the non-custodial parent. *Campbell*, 2 F. Supp. 2d 1186. There may be limited instances where a parent may give vicarious consent on behalf of a minor child to the taping of telephone conversations where that parent has a good faith, objectively reasonable basis for believing that the minor child is being abused, threatened, or intimidated by the other parent. *Silas*, 687 So. 2d 368; *Wagner*, 64 F. Supp. 2d 895.

Avian Biedermann began audio taping the conversations only after the children became hostile towards her. The Biedermann girls were engaging in behavior contrary to their normal dispositions. Petitioner observed the girls hide with the telephone on numerous occasions, only to discover they had been talking with Respondent, Kenneth Kyle Biedermann. The girls state legal terms and knowledge of the divorce proceedings that they would not have known, unless someone directly told them.

Kenneth Kyle Biedermann has continuously interfered with Avian Biedermann's discipline and repeatedly told the children that she is lying to them, thereby alienating her ability to maintain a relationship with the children. The children have exhibited outraged temper tantrums and complete disrespect for Avian Ann Biedermann after they have talked with Respondent on the telephone. Respondent, Kenneth Kyle Biedermann, has consistently failed to comply with the Court's Orders and has a blatant disregard for the girls' emotional well-being and this Court's proceedings.

Avian Biedermann is concerned for the emotional and physical well-being of her daughters. She began recording the children's telephone conversations with their father to determine whether Kenneth Kyle Biedermann was abusing, threatening, or manipulating their children.

E. The Admissibility of the Audio Tapes

Prior to the determination of inadmissibility, the proponent must show the exclusion of the tapes was required under either federal or state statutes. *Collins*, 904 S.W.2d 792. In this case neither the federal wiretapping statute nor Texas Civil Practice and Remedies Code sections 123.001 to 124.004 require the audio tapes in question to be inadmissible. Interceptions or audio tapes from telephone conversations are only found to be in violation of the federal and state wiretapping statutes if one of the party has not consented to their obtainment. In this case, under the doctrine of vicarious consent,

Petitioner Avian Ann Biedermann consented to the interception of her minor daughter's telephone conversation on their behalf.

A party who objects to the admissibility of evidence on the grounds that it was illegally obtained must show that the federal or state statutes require it to be excluded. Otherwise, the evidence must be admitted. *Sims v. Cosden Oil & Chemical Co.*, 663 S.W.2d 70 (Tex. App.—Eastland 1984, writ ref'd n.r.e.). The admissibility of evidence found to be illegally obtained is moderated by Texas Rules of Civil Evidence 402. Rule 402 provides that "(a)ll relevant evidence is admissible, except as otherwise provided by constitution, by statute, by these rules or by other rules prescribed pursuant to statutory authority." Tex. R. Civ. Evid. 402; see *Collins*, 904 S.W.2d 792.

The *Collins* court stated that although the Texas wiretapping statute does not specifically provide for the exclusion of illegally obtained "communications," the provisions for a cause of action for divulging wiretap information and the injunctive remedies provided in Section 123.004 are sufficient to rebut the presumption of admissibility under Rule 402. *Collins*, 904 S.W.2d 792. The audio tape recordings in the *Collins* case were illegally obtained under the federal and state statutes, therefore the trial court should not have admitted them into evidence. However, in this case the tapes were not illegally obtained. Avian Ann Biedermann vicariously consented to the audio taping of conversations in question for her minor daughters. The doctrine of vicarious consent is directly applicable to this case. Avian Ann Biedermann is currently the primary custodial parent and she consented to the audio taping on behalf of her young minor daughters.

On June 16, 2001, the oral deposition of Petitioner, Avian Ann Biedermann, was taken. During Petitioner's deposition, Allen Halm, representing Respondent, asked Petitioner if she had ever recorded Respondent's telephone conversations with the Biedermann children. Petitioner answered that she had. Respondent has been on notice that Petitioner was audio taping his conversations with the children since at least June 16, 2001. Respondent now argues that the audio tapes, both before June 16, 2001 and thereafter, were illegally obtained because Respondent did not consent to the interception. Respondent has, however, known that Petitioner was audio taping the conversations since June 16, 2001. Therefore, he has impliedly consented to the audio taping since at least June 16, 2001.

On August 20, 2001 the Court entered into an "Emergency Sua Sponte Order." Emergency Sua Sponte Order in pertinent part states:

THEREFORE, the Court does make and enter the following Orders which are effective immediately for the protection of said minors and for their best interest.

1. The original Petitioner, AVIAN ANN BIEDERMANN, the natural Mother, shall be the sole temporary managing Conservator of the four minor children with all the power, authority, duties, etc., as provided by law.
2. Until further Orders of the Court, the natural Father, KENNETH KYLE BIEDERMANN, the original Petitioner, shall have no contact or communication, **in any manner, way, form or fashion** with said minors until further Orders of this Court. Moreover, said Father shall not go, for any reason, within one hundred (100) yards of the original Petitioner's residence and/or where a reasonable person would anticipate said minors being at such time, including schools, churches, etc.
3. Any and all Orders and agreements heretofore made in this case, not in conflict with this Order, or that does not violate [sic] the intent or spirit of this Order, shall remain in full force and effect.
4. The Father shall not contact and/or attempt to contact, in any manner, the Mother, except by or through her attorney, the attorney ad litem in this case, Dr. Jack Ferrell or such party the said Dr. Jack Ferrell shall designate in writing.

The strong, direct language of the Sua Sponte Order issued on August 20, 2001 was necessary in this case because Respondent, Kenneth Kyle Biedermann, has repeatedly violated this Court's Orders. These blatant violations illustrate Respondent's lack of concern for his daughter's emotional well-being.

The audio tape recordings were made on Petitioner's home telephone and have been distributed to Respondent's attorney, Scott Monroe, Ad litem, Kurt Rudkin, and Dr. Ferrell, and one copy of the April 3, 2001 transcript the this Court, with Jody Halm's, Respondent's counsel at the time, approval and agreement. A client is bound by the actions of his attorney. *Portnow v. Berg*, 593 S.W. 2d 843, 845 (Tex. Civ. App.—Houston [1st Dist.] 1980, no writ); *In re Users Sys. Serv., Inc.*, 22 S.W.2d 331, 335 (Tex. 1999).

The audio taping of the conversations by Petitioner, Avian Ann Biedermann, has previously been discussed in front of and addressed by Judge Sherrill. It was recommended at the August 15, 2001 hearing by Dr. Ferrell to Judge Sherrill and Petitioner, Avian Ann Biedermann, that Petitioner continue to record Respondent's conversations with the minor children as a part of Respondent's "recovery" plan. There were no objections to Dr. Ferrell's proposed "recovery" plan or that Petitioner continue to record Respondent's conversations with the

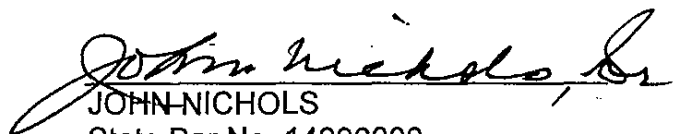
children by any of the attorneys or Judge Sherrill. The lawyers in the room at the time were: John Nichols, Pamela Bergman, Kurt Rudkin, and Jody Halm. As Respondent's Attorney of Record, Jody Halm failed to make a timely objection to Petitioner's audio taping the conversations in question, to the admissibility of the audio tapes, or to the continuation of Petitioner's recording the conversations.

The admissibility of the audio tapes has, therefore, already been addressed by this court. There were no objections from Respondent's counsel, the Attorney Ad Litem, Petitioner's counsel or the presiding Judge. The time for objection as to the admissibility of the audio tapes has already passed. Finding the tapes in question to be admissible, Petitioner, Avian Ann Biedermann, was instructed to continue taping the conversations. The Court did not violate the federal wiretapping statute or the Texas wiretapping statute in allowing Petitioner to present the transcript as evidence. Respondent failed to object to the admissibility of the audio taped conversations and now Respondent has waived his objection by failing to timely raise it.

8. Prayer for Admissibility

Petitioner prays that the Court hold the audio taped conversations of Respondent, Kenneth Kyle Biedermann, and the minor Biedermann children to be admissible.

LAW OFFICES OF JOHN NICHOLS

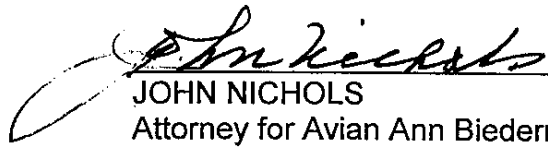


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Attorney for Avian Ann Biedermann

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on October 9, 2001.


JOHN NICHOLS
Attorney for Avian Ann Biedermann

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216TH JUDICIAL DISTRICT

PETITIONER'S AFFIDAVIT IN SUPPORT OF AUDIO TAPING

Avian Ann Biedermann appeared in person before me today and stated under oath:

"My name is Avian Ann Biedermann. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I acted alone in my decision to audio tape the children's conversations with Kyle Biedermann. I only began taping Kyle Biedermann's telephone calls with my daughters after:

"My daughters became hostile towards me.

"My daughters began to show signs of pressure regarding the divorce and psychological evaluations.

"The children began to engage in behavior contrary to their normal dispositions.

"I found the girls' hiding with the telephone.

"I observed on several occasions Kyle Biedermann obtaining an erection when he picked up my daughters. My sisters also witnessed this display of sexual arousal by Kyle Biedermann.

"During the first social study I said that Kyle Biedermann obtained an erection when he picked up my daughters and he did not deny my accusation.

"Dana True Biedermann was sitting on my sister's lap when Dana True told my sister she had a secret that she could not tell mommy or she would get in trouble. Dana True told my sister that one time when daddy and she were staying at the cabin they forgot to wear their pajamas and daddy kissed her all night long.

"I began audio taping my daughters' telephone conversations with Kenneth Kyle Biedermann because of my great fears for their emotional and physical well-being.

"The girls would state legal terms and have knowledge of the divorce proceedings beyond what they should have known.

"Kyla Biedermann would tell me that I was lying to her and the other girls.

"The children began to exhibit outrage and disrespectful attitudes towards me after they would speak to Kyle Biedermann on the telephone.

"I am concerned for the emotional and physical well-being of my daughters. I began recording the children's telephone conversations with their father, Kyle Biedermann, to determine whether Kyle Biedermann was abusing, threatening, or manipulating the girls.

AVIAN ANN BIEDERMANN

Biedermann Audio Tape Transcript Excerpts

1. Audio Taped Transcript of May 24-25, 2001:

KYLE BIEDERMANN : Well, they just said I should be allowed to talk to you girls. That's what, um, the court says. And, Mommy wouldn't let me talk to you girls last night.

EMILY: Why?

KYLE BIEDERMANN : I don't know. You'll have to ask Mommy that.

EMILY: Well, Daddy, Loren and Kyla were crying about you, 'cause they thought the police took you to jail.

KYLE BIEDERMANN : No, no. Not at all. They, uh, you know, they, uh, I just came, I, you know, just waited for them to come, so they would know that Mommy's not letting me talk to you girls.

EMILY: (inaudible)

KYLE BIEDERMANN : (inaudible) that, you know, I'm allowed to talk to you girls, and Momma wouldn't let me. So, I came over to see you. Now, where were you, Emmy?

EMILY: Um, I'm at home, on the couch.

KYLE BIEDERMANN : No, when, where were you, last night?

EMILY: Oh, why?

KYLE BIEDERMANN : Oh, well, just, did you look out the window? Did you see anything?

EMILY: Well, um, we thought that, um, we thought that you, uh, got arrested.

KYLE BIEDERMANN : No, no. I didn't do anything wrong.

KYLE BIEDERMANN : Dana True, you hang up right now. Dana True, if you don't hang up, you will be in trouble when I see you. Do you understand me? One at a time—

DANA TRUE: (inaudible) go on a trip.

KYLE BIEDERMANN : —hang up; hang up the phone, Dana True, now.

DANA TRUE: (inaudible) go with Mommy, right?

KYLE BIEDERMANN : Well, we'll see. But, you're gonna get in trouble if you don't hang up the phone—

DANA TRUE: For what? What happened?

KYLE BIEDERMANN : Dana True, if you do what I told you—

DANA TRUE: But, what happened?

KYLE BIEDERMANN : Dana True, I'm gonna spank you so hard, and you're not gonna get to do some things this weekend, if you don't hang up the phone right now. You'll get your turn.

2. **Audio Taped Transcript of May 24-25, 2001:**

KYLE BIEDERMANN : Dana True, get off the phone. Between us, Kyla, Mommy went ahead and just got you all involved, and got you girls all upset about calling the cops. But, there's no reason to do that. And, she was in the wrong. Now, I'm not allowed to come to the house. But, I know I was wrong, too. But, I'm gonna come there, 'cause I want to see you girls, and I'm supposed to be able to. It was wrong for Mommy not, not to let me talk to you girls. Do you understand?

KYLA: Uh-huh.

KYLE BIEDERMANN : That's the whole, if she doesn't want, if she wants to protect you girls from this, and keep you, you know, keep, you know, not have you affected by it, right?

KYLA: Yes.

KYLE BIEDERMANN : And, uh, I, I would think that calling the police so quickly, like that, really gets you involved, doesn't it?

KYLA: Uh-huh.

3. **Audio Taped Transcript, undated, 2001:**

NICK: Oh. You just got done talking to your dad.

LOREN: No, you're not Daddy. No, this is not Daddy.

NICK: It's Nick the bomb.

LOREN: Yeah. What else did you do on your vacation? What else did you do on your vacation?

NICK: Um, got a lot of clothes, and got a lot of stuff.

LOREN: Oh. That's what my mom does. She wastes her money.

4. **Audio Taped Transcript, undated, 2001:**

KYLE BIEDERMANN : Is this Loren?

LOREN: Yes.

KYLE BIEDERMANN : Loren. I've been waiting for your call. Thank you for calling, Loren.

LOREN: Momma wouldn't let us.

KYLE BIEDERMANN BIEDERMANN : Well, where are you?

LOREN: Home.

KYLE BIEDERMANN : You're in Fredericksburg?

LOREN: Yes.

KYLE BIEDERMANN : Oh, my Loren. Does Mommy know you're calling me?

LOREN: No.

KYLE BIEDERMANN : Oh, Loren. Oh, Loren, you make Daddy so happy. Do you know that?

LOREN: Yes.

KYLE BIEDERMANN : I love you so much, Loren. Thank you for calling. Where are you? In, in the house?

LOREN: I'm in Momma's bedroom.

KYLE BIEDERMANN : And, where's Mommy?

LOREN: Outside, talking to John.

* * * * *

DANA TRUE: Could you come by?

KYLE BIEDERMANN : Well, I can't come by. I would, right now, if I could, Dana True.

DANA TRUE: Why?

KYLE BIEDERMANN : Well, Mommy won't let me come by.

DANA TRUE: Momma's not here.

KYLE BIEDERMANN : Where is she?

DANA TRUE: I don't know.

KYLE BIEDERMANN : Well, she's probably outside or across the street. Dana True, I'm so happy to hear your voice. I miss you so much.

DANA TRUE: Well, why won't you just drive over here?

KYLE BIEDERMANN : Well, last time I came over, she called the police on me, Dana True.

DANA TRUE: Oh, Daddy.

KYLE BIEDERMANN : You don't think she'd do that again?

DANA TRUE: No. She won't do that. She's not here.

KYLE BIEDERMANN : She's across the street, or she's outside, Dana True. She doesn't leave you alone at the house.

5. **Audio Taped Transcript May 24-25, 2001:**

KYLE BIEDERMANN : You have reached 997-8385. Please leave a message after you hear the beep.

KYLA: Hi, Daddy. This is Kyla. Um, I got the information, as you know. It, um, the rodeo's changed. Mom has to call the people, and see what time. And, it costs money, so bring money. At least more than 15 dollars, I think. I don't know, but, it's gonna cost us 20 dollars to get in. That's all I know. Um, so, um, and, it's gonna be a rodeo. And, and, when I get the time, I'll call you. Um, Daddy, we can leave Wednesday instead of Thursday, if that's okay with you. We can leave Wednesday. Because,

Ms. Klein said there's nothing happening on Thursday. All they're doing is cleaning. So, she said she would have someone clean my desk for me. Um, she said we could leave Wednesday, like I said. Um, and if you want to stay for Thursday, that's fine. Um, but I really wouldn't want to. Um, you can either leave Wednesday or Thursday. That's what I know, right now. Okay? Bye.

(Phone disconnects)

6. **Audio Taped Transcript May 24-25, 2001:**

KYLE BIEDERMANN : I told you to call me back, and you didn't, right?

KYLA: Yes, I got the information. I went and asked Tara for the information—Dana True. I went and asked for the information, and, Mommy asked me why. And, I said, I called, I said, because Daddy wants to know. And, I called him, and he said, get the information and call him back. She said, no. Go to bed.

KYLE BIEDERMANN : Well, I didn't get a chance to talk to your sisters, did I?

KYLA: No.

KYLE BIEDERMANN : See. I get to talk to all of you every night. So, did you think the police took me in to jail?

* * * * *

KYLE BIEDERMANN : I need to get to talk to you girls every day.

KYLA: Did Momma get in trouble?

KYLE BIEDERMANN : Well, I don't know. We'll have to ask her. It also says, if you go out of Gillespie County, (inaudible) she's got to let me know when she takes you. And, that, that's why she wouldn't let me (inaudible)—

KYLA: Dana True.

KYLE BIEDERMANN : —and so, she wouldn't tell me that, either. That's against the court order, also.

KYLA: Can you come with us?

KYLE BIEDERMANN : Kyla, it's not a good thing for me to be— I mean, I would love to go with you girls. But, Mommy doesn't want me to be there,

and you know that.

KYLA: That doesn't matter. I want you to watch us do the bull, chase the calves and stuff.

7. **Audio Taped Transcript July 2001:**

AVIAN BIEDERMANN : If they're not going to Fiesta, Texas tomorrow, they need to come home.

KYLE BIEDERMANN : Okay. How about you take them to Grandma and Pappa's to spend the day.

AVIAN BIEDERMANN : I don't know. Why don't you (inaudible) think about it?

KYLE BIEDERMANN : How about Wednesday? How about Thursday? Do I have to go to court, in a hearing, just to see the kids more? Instead of you lying about me not wanting the kids?

AVIAN BIEDERMANN : I didn't lie.

KYLE BIEDERMANN : Yeah. You guys lied, telling them that we didn't want to see the kids any more. I (audible) one day a week. That's not the case.

AVIAN BIEDERMANN : You're the one that came up with that.

KYLE BIEDERMANN : I want it just for 30 days. That was what that was for. 30 days, and you—

AVIAN BIEDERMANN : You're, hey, I didn't like, you're the one that came up with the plan.

KYLE BIEDERMANN : Okay. I'm going to court to get the kids more often. Do I have to go to court, or would you just let me see the children more often? Yes or no?

AVIAN BIEDERMANN : I already said, if you want to take the children to Fiesta, Texas tomorrow, that's fine.

KYLE BIEDERMANN : Okay. I'm going to court. You already know that. We're already going to court, just so I can see the kids, 'cause you're a fucking asshole.

AVIAN BIEDERMANN : I'm a what?

KYLE BIEDERMANN : You heard me. You won't even let me see the girls.

AVIAN BIEDERMANN : That is not true.

AVIAN BIEDERMANN : Discuss it with my lawyers.

KYLE BIEDERMANN : Oh, it's for your lawyers' kids? Oh, my goodness. I didn't know that they were the lawyers' kids. Oh, gosh. I'm glad that they care more about your children than you do. I'm glad to hear that. We're going to court, so I can see the kids more. And, that's because you're making me. 'Cause, you don't care about the kids. All you want to do is hurt me. You're not gonna hurt me very long. And, the truth be know, we have to go to court, just so I can see them. The kids know that. You don't have to hide it from them. You can't hide it from them.

AVIAN BIEDERMANN : Give me a hug.

EMILY: My tummy hurts.

AVIAN BIEDERMANN : your tummy hurts? Come here. I'll give you something for it. Bye, I love you.

KYLA: Bye.

AVIAN BIEDERMANN : Try not to get your ears wet.

(End of tape)

8. **Audio Taped Transcript of July 6, 2001:**

KYLE BIEDERMANN : Uh-huh. Well, I mean, have you been home? I've called twice.

KYLA: Yeah.

KYLE BIEDERMANN : (inaudible)

KYLA: It did.

* * * * *

KYLA: Um, yeah. Um, hold just a minute. I need to tell Momma something. Momma, Momma? I need to go to the bathroom. Okay. Momma doesn't like, Momma doesn't know that, you know, when I talked

to you, when you were (inaudible)?

KYLE BIEDERMANN : Uh-huh.

KYLA: Yeah? Well, um, Tara was down there. When she was about to come upstairs, but she heard me talking to you about the thing. She had heard me talking to you, and telling you what I was telling you, and she got pretty mad. And, and she got (inaudible), too. And, um, so, she sent one of my sisters up to come get me, um, to open up presents and cake.

KYLE BIEDERMANN : Uh-huh.

KYLA: Yeah? Um, well, Momma made up a new rule that we cannot go, um, out of the room where a grown-up is in.

9. **Audio Taped Transcript of August 3, 2001:**

EMILY: You glad I remembered to call you back?

KYLE BIEDERMANN : Yes, I am. Very, very much. Very, very, very much. You know, 'cause I, see, I didn't talk to you girls for a couple of days, and I kept calling, calling, calling. And, I never got a call back.

EMILY: You kept doing what?

KYLE BIEDERMANN : I kept calling you girls and leaving messages. And, I never got a call back. So, I didn't know what was going on.

EMILY: Well, Momma says that we can't answer the phone, without her permission.

KYLE BIEDERMANN : Well—

EMILY: She says that if we do, she's gonna spank us (inaudible).

KYLE BIEDERMANN : Oh, that's not right, Emmy. Oh, Emmy. You girls are big enough. You don't need to get spanked.

EMILY: No, that's what we get all the time. Every single day.

KYLE BIEDERMANN : Well, what if somebody asked you questions about that? What would you say? What if the, what if the court asked you something? What would you say?

EMILY: Um, a question?

KYLE BIEDERMANN : Yeah. What if they ask you if you still, if you got (inaudible), what would you say?

EMILY: I would say that Momma switch, spank us every day.

KYLE BIEDERMANN : And, what would they spank you for?

EMILY: What?

KYLE: What would they spank you for?

EMILY: Calling on the phone without permission, when you say that we can, you know.

10. **Audio Taped Transcript of August 3, 2001:**

KYLE: Yeah, wait 'til you see it. It's really good. I just thought I'd get you today, and then we could, you know, then you could be at Ace with me, tomorrow, to help me do the garage sale. I, there's no reason for you not to be able to come over here, except that Mommy doesn't want you to see me. That's it. Well, we just have to wait, huh, precious?

KYLA: Dad, you know what?

KYLE: What?

KYLA: Momma's watching movies for child discipline.

KYLE BIEDERMANN : Oh, gosh. I guess she needs to learn something. She's just spanking you girls for—

KYLA: Nothing.

KYLE BIEDERMANN : —for no reason. And, that's not good, is it?

KYLA: Uh-huh. I think the child discipline is telling her that.

* * * * *

KYLE BIEDERMANN : Well, why don't you bring the video with you? Okay? Put it in your bag. And, I'll watch it and see what I think.

KYLA: Okay. 'Cause, we don't know. We just know she's watching it, when we are not around.

* * * * *

KYLE BIEDERMANN : Well, I mean, that's, the Bible says that, you know. I don't know. The problem is that you girls shouldn't be spanked when Mommy (inaudible), like not letting you come to the phone.

KYLA: Uh-huh.

KYLE BIEDERMANN : Or, when you come, not letting you see your dad.

KYLA: Uh-huh.

KYLE BIEDERMANN : That's bad.

KYLA: Well.

KYLE BIEDERMANN : Oh, my precious.

LOREN: I want to talk to Daddy.

KYLE BIEDERMANN : Well, no matter what, Kyla, I'm gonna see you Sunday morning. Okay?

11. **Audio Taped Transcript of August 3, 2001:**

KYLE BIEDERMANN : Hi, precious. How'd you know it was me.

KYLA: 'Cause the phone says who it is.

KYLE BIEDERMANN : Oh, it does?

KYLA: Yeah.

KYLE BIEDERMANN : That's why Mommy doesn't answer 'cause she knows it me.

KYLA: Yeah.

KYLE BIEDERMANN : How are you girls going? I haven't talked to you for a couple of days.

KYLA: Fine.

KYLE BIEDERMANN : What did you girls do yesterday?

KYLA: We went swimming.

KYLE BIEDERMANN : Where'd you go.

KYLA: (indiscernible) Johnson's.

KYLE BIEDERMANN : Uh-huh.

KYLA: But we went really late.

KYLE BIEDERMANN : What do you mean?

KYLA: We went really late and Mom's was being mean. I asked her if we could come by grandma and papa's and get the goggles. And she said, we're not making any stops. And so Loren put the top of her bathing suit in the clothes that we gave you. And Mamma spanked me for giving the clothes to you.

KYLE BIEDERMANN : Uh-huh. Oh God. You could have come and gotten them. They're in my truck.

KYLA: I know.

* * * * *

KYLE BIEDERMANN : I'll take you to the bus.

KYLA: You will?

KYLE BIEDERMANN : Yes.

KYLA: Mamma said we weren't going to get to see you.

KYLE BIEDERMANN : That's not the truth. I'll pick you all up at eight o'clock in the morning, and I'll take you to the bus.

* * * * *

KYLE BIEDERMANN : Now, can you believe that Mommy wasn't going to let me see you girls at all this weekend. It's my weekend. Did you know it's my weekend to see you girls. Now, I'm not going to see you at all.

Why would she do that Kyla?

KYLA: Well, Daddy, I wanted choir.

KYLE BIEDERMANN : I know, I'm glad you got choir.

But why can't I see you tonight or tomorrow? Or tomorrow?

KYLA: Tonight and tomorrow? Or today?

KYLE BIEDERMANN : Yes. You know, if she's going to take me days, then why can't she give me another day?

KYLA: Why is she taking it? How could she do that? Why can't you?

KYLE BIEDERMANN : Because her attorneys are ... They don't care about you girls. They just want to hurt me. That's it. They're good at it. They don't care one bit about what you girls want. They are trying to keep you away from me.

KYLA: We won't let them.

KYLE BIEDERMANN : And they're doing everything they can to do that, Kyla.

KYLA: Well, how come they say that they love us?

KYLE BIEDERMANN : Well, what do you think?

Call and see ... You call and say, hey listen, if you love me so much, let me see my daddy for a day. What do you think they'll say?

KYLA: I don't know -- They'll laugh at me.

KYLE BIEDERMANN : Okay.

KYLA: And then they'll say, huh, well, that's the court's decision.

KYLE BIEDERMANN : It's not the court's decision.

KYLA: Mommy says it is.

KYLE BIEDERMANN : Yeah, well, she's just telling you a lie, Kyla.

It's up to Mommy, completely. Nobody tells her that she can't let -- She has control of you girls when she has you, and she can do whatever she wants. She can let me have you. She can let you go with me if she wants. It's all up to her. The court doesn't tell her that she can't. All right.

When it was Mother's Day. Remember when it was Mother's Day.

KYLA: Mother's Day.

KYLE BIEDERMANN : Mother's Day, was Sunday. That was my day. I let you go with Mommy, didn't I.

KYLA: Why?

KYLE BIEDERMANN : Because that was the right thing to do.

The court said it was my day. But does that mean that I can't let Mommy have you? Of course not. It's up to me. It's my day, and if I want to let you go with Mommy, I can let you go with Mommy.

Mommy has given you to me one other day. We went someplace and she gave me – she let you come early, right? A few times.

KYLA: Yes.

KYLE BIEDERMANN : She decided to let me come early.

KYLA: Yeah.

KYLE BIEDERMANN : The court says at five o'clock I can pick you up. But Mommy let you go early. Why? Because it's up to Mommy. The court doesn't tell her you can't do that. The court didn't tell me I can't let you girls go with Mommy on Mother's Day. But I let you go. 'Cause that's the right thing to do. The court will never tell us you can't do anything.

KYLA: Mommy has gotten worse.

KYLE BIEDERMANN : I know she has, Kyla. I'm just gonna – You know. I'm sorry that you that you girls have to go through this. I'm just sorry you have to go through it.

* * * * *

KYLA: Mamma, daddy wants to talk to you.

AVIAN BIEDERMANN : Yes.

KYLE BIEDERMANN : Avian, I don't want any arguments or complaints, but you get the girls through the fourth, which is Saturday and I get them on the 5th.

AVIAN BIEDERMANN : No, you only get two of them on the 5th.

KYLE BIEDERMANN : I'm picking all up at eight o'clock in the morning. I talked to my attorney. And I'll have the police there if you don't give them to me. You call your attorney if you want to change. Okay, let me talk to

the girls. All four at eight o'clock in the morning.

12. **Audio Taped Transcript of August 3, 2001:**

EMILY: That's not fair, everybody else has dads.

KYLE BIEDERMANN : Well, you tell Mommy. She's the one keeping you away from me, Emmy. There's nothing I can do about it. It's her and her attorneys. They don't want you to see me. They won't let me pick you up at eight o'clock in the morning on Sunday, did you know that?

EMILY: Why?

KYLE BIEDERMANN : Because they don't want me to see you

Mommy just told me she won't let you come at eight o'clock in the morning. She said, I can't see you and Kyla at all. I said, uh-huh, I'm going to pick them up at eight o'clock in the morning. So don't let her trick you Emmy. I'm picking you up at eight o'clock in the morning, no matter what. If not, I don't get to see you at all. And for some reason, I don't know why, Emmy, they don't want you to see me.

EMILY: Well, why don't you then tell the court?

KYLE BIEDERMANN : I did tell the court, but I can't do anything about it. They played some mean tricks, Emmy.

EMILY They're not going to do anything about it?

KYLE BIEDERMANN : I can't do anything about it.

EMILY: No, the court.

KYLE BIEDERMANN : You just have to ask Mommy why. You ask Mommy why. She won't tell you. But the bottom line is, they didn't want you to see me, and so they tricked the court and made it out so that – made sure that I wasn't going to get a chance to see you.

EMILY: That's not fair.

KYLE BIEDERMANN : I know. I'm sorry, Emmy. But I'll see you Sunday morning, Okay?

EMILY: Everyone else gets to see their dad almost every day.

KYLE BIEDERMANN : Well, tell Mommy that. Ask her if maybe I can take

you out for ice cream or something. Okay?

EMILY: Okay.

KYLE BIEDERMANN : Okay. All right.

EMILY: Okay.

KYLE BIEDERMANN : Okay. Well, Emmy, I got to go.

* * * * *

KYLA: I want you to call.

KYLE BIEDERMANN : Well, I'll be happy to do anything Kyla. Just remember, I'll pick you up at eight o'clock in the morning, and don't let Mommy fool you that I'm not.

KYLA: Why is she always trying to lie to us that we're not.

KYLE BIEDERMANN : 'Cause –

13. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : But, you can also tell Mommy, Mommy, please don't spank Loren. And, uh, if she does, you can call your attorney.

EMILY: Attorney?

KYLE BIEDERMANN : You can call the, the, there's a, that man, Kurt Rudkin, that we sat around the room and talked to, that one day at Grandma and Pappa's.

EMILY: Yes, but we don't know his phone number.

KYLE BIEDERMANN : I'll give you the phone number, if you want to call. But, you can tell Mommy, if you spank, that, you know, tell that you'll call your attorney, if you have to. Okay? I don't want you to get in trouble Emmy. I'm sorry. Oh boy. I just love you girls. I know God's gonna take care of you girls, no matter what, Emmy.

EMILY: Okay.

KYLE BIEDERMANN : God's watching every second.

EMILY: If I find Momma, before she spansks Loren, I'll tell her that you wanted to talk to her.

KYLE BIEDERMANN : Yeah.

EMILY: And to call her.

KYLE BIEDERMANN : That's right.

EMILY: But, if it doesn't work?

KYLE BIEDERMANN : Then, say, then, then you're gonna, then Daddy's gonna call the attorney.

* * * * *

KYLE BIEDERMANN : Okay. Lord Jesus, we just thank you that you love Kyla and Emmy and Loren and Dana True so much, and that you've promised to protect them in every way, Lord. And, we just pray that, that they will in no way have any anger or bitterness toward Mommy, even though Mommy may not be being nice to them—

EMILY: Well, I'll tell her, that, uh, that you're gonna call your attorney—

KYLE BIEDERMANN : Uh-huh.

14. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : Oh, girls I am so sorry. Oh, girls, I just can't believe this. Do you remember anything else that you talked to the guy about, yesterday, precious?

KYLA: Uh, no, not really.

KYLE BIEDERMANN : Did he ask you anything about, um, watching movies that were, you know, about, um, babies being born?

KYLA: Yes. He asked me that question, um, uh, asked me, did you ever watch a movie of a baby being born, with one of your parents? And, I said, um, yes, but it wasn't with my parents. It was with Heather, I said, my cousin.

KYLE BIEDERMANN : Uh-huh.

* * * * *

KYLE BIEDERMANN : Yeah. Anything else, Kyla, that he asked for?

KYLA: No, except for the potty stuff, you know. And, I told him about that.

KYLE BIEDERMANN : About, the only thing you knew about was the kitten?

KYLA: Yeah. I said the kitten peeing on me, uh, because it was me, it was my fault. But, um, and then, my other cat, um, peeing on my sleeping bag.

KYLE BIEDERMANN : Was he trying to ask if it, did he think it was me that peed on you?

KYLA: Well, actually, um, I don't know what, I told him about the cats. And then, I told him the one time, one morning, I told him that, when you were, you used to live with us, we used to all get up in the morning. We used to all come on you and Momma's bed, and when we did, um, Loren came, and she got sick. And, she threw up.

KYLE BIEDERMANN : Uh-huh.

KYLA: Sort of on you. I told him that.

KYLE BIEDERMANN : Yeah. Okay, precious. All right, precious. Well, what kind of doughnuts do you want?

KYLA: Um, let me see. Uh, do they still have tiger tails?

KYLE BIEDERMANN : Yeah. Want a tiger tail?

KYLA: I guess.

KYLE BIEDERMANN : Okay.

KYLA: And, if they don't, um, I, I don't know what I want.

KYLE BIEDERMANN : Well, don't let Mommy know I'm coming.

KYLA: Okay.

KYLE BIEDERMANN : And then, you guys just look out the window. It's gonna take me about 15 minutes to get them. Okay?

KYLA: Okay.

15. **Audio Taped Transcript of August 8-10, 2001:**

KYLE BIEDERMANN : Hi.

KYLA: Um, you know, right after I called you, I went to the beauty shop. I sat down, and the phone rang, and it was you.

KYLE BIEDERMANN : Oh, good, Kyla.

KYLA: 'Cause, you got right back, right, you got back right after I called you.

KYLE BIEDERMANN : Well, good.

KYLA: Did she, did, um—

KYLE BIEDERMANN : Linda told me you called.

KYLA: Yeah?

KYLE BIEDERMANN : I just wanted to make sure I got you. I didn't think I'd get you on the phone. So, is Mommy taping these phone calls?

KYLA: How am I supposed to know? I think so.

KYLE BIEDERMANN : Well, you know, is there a record button, or some kind of beeping thing on the phone, that you have to (inaudible)—

KYLA: I don't know.

* * * * *

KYLA: Okay, Daddy? I think I told the guy about, um, what Momma and, I know I told the guy that, um, that, about the, them telling us it's our fault that ya'll have arguments. And, I told him that me and Laura think, feel like, um, uh, we, it's our fault that the divorce came up.

KYLE BIEDERMANN : Uh-huh. But, that they're making you feel that way?

KYLA: Yeah.

KYLE BIEDERMANN : Okay.

KYLA: I told them all the bad things about Momma, and I told them (inaudible).

16. Audio Taped Transcript of August 8-10, 2001:

KYLE BIEDERMANN : Next summer. A whole school year, when you're

off for the summer, again, and you're—What's the little beeping noise?

DANA TRUE: I don't know.

KYLE BIEDERMANN : That must be the, that must be the tape. They're probably taping our conversations, girls.

DANA TRUE: What?

KYLE BIEDERMANN : Who's on the phone, right now?

DANA TRUE: Me.

KYLE BIEDERMANN : Just you?

DANA TRUE: Yes.

KYLA: And me, and Kyla.

KYLE BIEDERMANN : You hear that little beeping noise? The beep-beep?

KYLA: Yes.

KYLE BIEDERMANN : That must be the, that they're taping it.

* * * * *

KYLA: —she told us that, um, she told us that Daddy shouldn't be coming by, 'cause it makes, 'cause we know it makes trouble. And, she said, I don't come by and see you, when, um, when you're with Daddy. And, I said, yeah, that's because you don't love us that much.

KYLE BIEDERMANN : Oh. Oh, my precious. Well, that's because she sees you, all the time. I don't get to see you. And, that's because I want to see you, and she really doesn't need to, 'cause she sees you all the time.

KYLA: Well, that's what I told her, because she doesn't love us.

KYLE BIEDERMANN : Yeah. And, what'd she say?

KYLA: She said, no that is not true.

KYLE BIEDERMANN : Yeah, well. See, Kyla, you understand what's going on. That's what's so good, Kyla. You can see right through all that garbage. You can see right through it. And, uh, and, if you girls want to see me, that's what's important. That's what you girls want, not what she

wants. Right?

KYLA: Uh-huh.

KYLE BIEDERMANN : Well, I appreciate you girls very much. I appreciate it very much. All right, girls, why don't you try to give me a call a little bit later, Okay?

KYLA: Okay.

17. **Audio Taped Transcript of August 16, 2001:**

KYLA: It was good. Where did you go?

KYLE BIEDERMANN : Huh? (inaudible)

KYLA: (inaudible) And, that's it?

KYLE BIEDERMANN : That's it.

KYLA: (inaudible) Why? We still haven't convinced them yet? (inaudible)

KYLE BIEDERMANN : I've got (inaudible)

KYLA: Why haven't we? We've told them everything that Momma does wrong. There's so many things bad. And, everything you do right. And, we still haven't convinced them?

KYLE BIEDERMANN : Not yet, Kyla.

KYLA: Why? What more do they need?

* * * * *

KYLA: On Monday, and then Momma gets us again? Why? I feel—

KYLE BIEDERMANN : Well, it's gonna be like this for a while. I'm sorry.

KYLA: Have we come to a point where I can go down to pharmacy and call you?

KYLE BIEDERMANN : I don't thing (inaudible)

KYLA: Why?

KYLE BIEDERMANN : Kyla, I can't talk about this (inaudible), okay?

KYLA: Why?

KYLE BIEDERMANN : I just can't.

KYLA: What's wrong? Do they know that you're thinking it?

KYLE BIEDERMANN : Well, no. But, they tape everything you say, Kyla.
So (inaudible)

KYLA: Who does?

KYLE BIEDERMANN : (inaudible) I'll talk to you tomorrow, okay? I'll come
and get you tomorrow, and (inaudible)—

OFFICE OF THE ATTORNEY GENERAL
DISTRICT OF COLUMBIA
WASHINGTON, D.C.

DEC 17 2001

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POLLARD & MONROE
ATTORNEYS AT LAW

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KERRVILLE, TEXAS 78028

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October 5, 2001

Ms. Barbara Meyer
District Clerk
Gillespie County Courthouse, Ste. 204
101 W. Main Street
Fredericksburg, Texas 78624-3700

RE: Cause No. 9284; In the Matter of the
Marriage of Avian Ann Biedermann and Kenneth
Kyle Biedermann and In the Interest of Kyla Rae
Biedermann, Emily Laine Biedermann, Loren
Noel Biedermann and Dana True Biedermann,
Minor Children; In the District Court of Gillespie
County, Texas, 216th Judicial District

Dear Ms. Meyer:

Enclosed herewith please find and Original and one (1) copy of Notice of Intent to
Take Oral Deposition of Avian Ann Biedermann in connection with the above entitled and
numbered cause.

Will you please file the Notice and return a file marked copy to our office in the
enclosed self addressed, stamped envelope.

Thank you very much for your assistance in this regard.

Yours very truly,

Stephanie C. Parker

Stephanie C. Parker, Assistant to Scott F. Monroe

FILED

At *12:18* O'clock *P.M.*

OCT 9 2001

Mr. John Nichols: CMRRR # 7001 0360 0002 6128 1054
Mr. Kurtis S. Rudkin: CMRRR # 7001 0360 0002 6128 1061

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Barbara Meyer
Deputy

enc.
:scp
cc:

O'clock

12:18

dr

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

* IN THE DISTRICT COURT
*
*
*
*
*
* OF GILLESPIE COUNTY, TEXAS
*
*
*
*
*
* 216TH JUDICIAL DISTRICT

NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF AVIAN ANN
BIEDERMANN

TO: AVIAN ANN BIEDERMANN, by and through her attorney of record:

Mr. John Nichols
Attorney at Law
Law Offices of John Nichols
Chevron Tower
1301 McKinney Street, Ste. 3636
Houston, Texas 77010

PLEASE TAKE NOTICE that KENNETH KYLE BIEDERMANN will take the oral deposition of AVIAN ANN BIEDERMANN.. The deposition will take place at the Law Office of POLLARD & MONROE, 951 Main Street, Kerrville, Texas 78028 at 10:00 A. M. on October17, 2001. All parties are invited to attend and examine the witness as prescribed by the Texas Rules of Civil Procedure.

FILED
At 12:19 O'clock P.M.

OCT 9 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Signature]
Deputy

POLLARD & MONROE

ATTORNEYS AT LAW

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L. W. POLLARD (1902-1981)
THOMAS W. POLLARD
SCOTT F. MONROE

October 5, 2001

Ms. Barbara Meyer
District Clerk
Gillespie County Courthouse, Room 204
101 W. Main Street
Fredericksburg, Texas 78624-3700

VIA: Fax (830) 997-9958

RE: Cause No. 9284; Biedermann vs. Biedermann

Dear Ms. Meyer:

We are set for a pre-trial hearing on this case on Tuesday, October 9, 2001, in Boerne, Texas. I would like for my client, Kenneth Kyle Biedermann, to pick up the Court's file that morning. He will also be responsible for returning the file to you after the hearing.

Thank you very much.

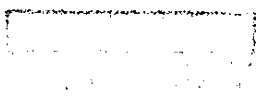
Yours very truly,



Scott F. Monroe

SFM/scp

received
10-5-01



LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

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JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization:
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National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 112

October 10, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

7001 1940 0003 4532 3509

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

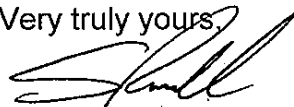
Dear Mrs. Meyer:

Please take the indicated action:

1. **Response to Respondent's Motion to Strike Brief in Support of Emergency Sua Sponte Order**
2. **Response to Respondent's Motion for Sanctions for Abuse of Discovery**

- (X) File among papers in the above cause.
- (X) File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger. ✓ *10-18-01*
- () A filing fee is enclosed in the amount of \$_____.
- () Present to Judge for signature and/or hearing date.
- () Demand for jury.
- (X) By copy hereof, those persons whose names appear below are being notified of this filing.

Very truly yours,


Shannon Russell
Law Clerk for John Nichols

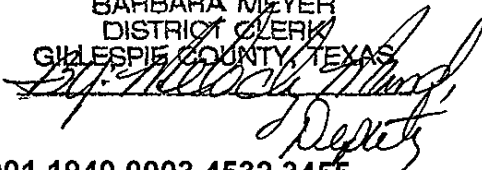
JN:sr
Enclosures

cc: Scott F. Monroe (w/encl)
Kurtis Rudkin (w/encl)

FILED
At 11:41 O'clock A.M

OCT 14 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS


7001 1940 0003 4532 3455
7001 1940 0003 4532 3493

FILED
At 11:420'clock A.M

No. 9284

OCT 12 2001

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

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IN THE DISTRICT COURT OF
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Signature]
Deputy
GILLESPIE COUNTY, TEXAS

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

216TH JUDICIAL DISTRICT

**RESPONSE TO RESPONDENT'S MOTION TO STRIKE BRIEF IN SUPPORT OF
EMERGENCY SUA SPONTE ORDER**

Comes now, Avian Ann Biedermann, Petitioner, by and through her Attorney of Record, John F. Nichols, Sr., moving this Court to deny Respondent's Motion to Strike Brief in Support of Emergency Sua Sponte Order, showing the Court as follows:

I.

Respondent filed Motion to Strike Brief in Support of Emergency Sua Sponte Order on or about September 28, 2001 in response to Petitioner's Brief in Support of Emergency Sua Sponte Order. The Order was issued by this Court on August 20, 2001 in response to Respondent's blatant and repeated violations of this Court's orders.

The relevant orders issued by this Court prior to the August 20, 2001 Emergency Sua Sponte Order are:

- (1) **December 18, 2000, 12:30 p.m. Temporary Restraining Order:**
... Petitioner and Respondent are immediately restrained from:
* Molesting or disturbing the peace of the children...
- (2) **February 19, 2001 Mediation Agreement on Temporary Orders until March 22, 2001:**

11. Each party shall refrain from engaging in conduct designed to alienate the children against the other parent.

(3) **May 14, 2001 Agreed Temporary Orders Pursuant to "Mediation Agreement on Temporary Orders Until March 22, 2001:**

Minimizing Disruption

IT IS ORDERED that to minimize disruption of the children's education, daily routine, and association with friends, Avian Ann Biedermann and Kenneth Kyle Biedermann shall:

1. Refrain from engaging in conduct designed to alienate the children against the other parent;
2. Abide by the "Parent's Foals, Agreement and Guidelines Relating to the Children," attached hereto as Appendix 2. (See immediately below)

* * * * *

[Appendix 2]

Kyle and Avian agree to attempt at all times, to act in a manner consistent with the following goals, which Kyle and Avian believe to be in their children's best interest:

- * to provide the children with an emotional environment in which each is free to continue to love the other parent and to spend time with the other parent;
- * to encourage good feelings from the children about the other parent and their extended family, if any;
- * to plan together as parents rather than through the children;
- * to not take sides or take issue with decisions or actions made by the other parent, especially in front of the children;
- * to present a united front on the handling of any problems with the children;
- * to use discretion as to the time and frequency of phone calls to the children;
- * to behave discreetly with other people in the children's presence; and,

* * * * *

Kyle and Avian agree that it is in the best interest and welfare of the children that the children be accorded rights and as such are third-party beneficiaries of this agreement and stipulation between their parents. Both parents acknowledge the following rights of the children, to wit:

- * the right to a continuing relationship with both parents;
- * the right to know and appreciate what is good in each parent without one parent degrading the other;
- * the right to have a relaxed, secure relationship with both parents without being placed in a position to manipulate one parent against the other.

* * * * *

Temporary Injunction as to Children

The Court finds that, based on the public policy considerations stated in section 153.001 of the Texas Family Code, it is in the best interests of the children that the following temporary injunction be issued and related orders be entered.

IT IS ORDERED that Avian Ann Biedermann and Kenneth Kyle Biedermann and their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise are temporarily enjoined from:

1. Molesting or disturbing the peace of the children or of any other party.

* * * * *

Temporary Injunction

The Court finds that the parties have agreed that the existing restraining order shall remain in effect and to the entry of the following temporary injunctions while this case is pending.

The temporary injunction granted below shall be effective immediately and shall be binding on Avian Ann Biedermann and Kenneth Kyle Biedermann;

on their agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

(4) **May 14, 2001 Temporary Orders hearing:**

[p.7] MS. BERGMAN: Our office, the office - Law Offices of John Nichols, will call Dr. Jack Ferrell in San Antonio and set up appointments for custody evaluation, the parties and the children.

[p. 10] THE COURT: All right, then this is the agreement you have worked out this morning?

MR. HALM: That is correct, Your Honor.

THE COURT: The Court will consider that a Rule 11 Agreement and proceed on it.

(5) **May 31, 2001 Telephonic Conference:**

[p. 12] THE COURT:... I think the main thing is this discussion business; and all the family members are included, the parents, and any other aunts and uncles, and so forth, and friends of the family are not to discuss this matter with the children.

(6) **June 4, 2001 Rule 11 Agreement for Additional Temporary Orders:**

Pursuant to Rule 11, Tex. R. Civ. P., Avian Ann Biedermann, Petitioner, and Kenneth Kyle Biedermann, Respondent, through their respective attorneys of record, agree to additional temporary orders as follows:

(3) The Parties agree and IT IS ORDERED that Dr. Jack G. Ferrell, 14310 Northbrook Dr., Suite 120, San Antonio, Texas 78232, 210-499-5025, 210-499-5825 facsimile, is appointed to interview, examine, evaluate, and consult with the parties and the children and the children to prepare a custody evaluation to be filed with the Court on or before August 1, 2001. The parties further agree and IT IS ORDERED that the earliest available appointments for the parties and the children shall be made through the Law Offices of John Nichols and notices sent to Allen J. (Jody) Halm forthwith.

(7) **July 5, 2001 Modification Hearing:**

[pp. 111 & 112] MR. RUDKIN: I was going to raise one additional matter. I met with the children and in my perspective, these children are nine down to five years old. They have way too much knowledge - - -

THE COURT: Of what's going on?

MR. RUDKIN: - - - the buzz words and consternation and fighting back and forth with mom and dad, lawyers and this and that. I would request that there be an admonition that neither party discuss in any fashion, shape, or form the litigation process, court proceedings, anything to do with this matter.

THE COURT: That's an Order of the Court, should not be discussed or even mentioned other than the fact that if you have to, that we will be deciding it before school time, but it's very important; and financial conditions and so forth, I think the children should not be involved in this process.

If either parent - I find out either parent is making comments, derogatory comments or such about the other parent, this Court will certainly take sanctions against the person making the comments. It's very important, and I think - and I think the grandparents, this would also apply. I think the grandparents can do a lot on both sides, a lot to kind of ease the pressure of the children.

In direct response to Respondent's blatant and repeated violations of this Court's orders the Court entered into the "Emergency Sua Sponte Order" on August 20, 2001. Emergency Sua Sponte Order in pertinent part states:

THEREFORE, the Court does make and enter the following Orders which are effective immediately for the protection of said minors and for their best interest.

- (1) The original Petitioner, AVIAN ANN BIEDERMANN, the natural Mother, shall be the sole temporary managing Conservator of the four minor children with all the power, authority, duties, etc., as provided by law.
- (2) Until further Orders of the Court, the natural Father, KENNETH KYLE BIEDERMANN, the original Petitioner, shall have no contact or communication, **in any manner, way, form or fashion** with said minors until further Orders of this Court. Moreover, said Father shall not go, for any reason, within one hundred (100) yards of the original Petitioner's residence and/or where a reasonable person would anticipate said minors being at such time, including schools,

churches, etc.

- (3) Any and all Orders and agreements heretofore made in this case, not in conflict with this Order, or that does not violate [sic] the intent or spirit of this Order, shall remain in full force and effect.
- (4) The Father shall not contact and/or attempt to contact, in any manner, the Mother, except by or through her attorney, the attorney ad litem in this case, Dr. Jack Ferrell or such party the said Dr. Jack Ferrell shall designate in writing.

The strong, direct language of the Sua Sponte Order was necessary in this case because Respondent, Kenneth Kyle Biedermann, has repeatedly violated this Court's Orders. These blatant violations illustrate Respondent's lack of concern for his daughter's emotional well-being and this Court's authority.

II.

Dr. Jack Ferrell is the court approved psychological and child custody evaluator on this case. Dr. Ferrell has prepared a 16 page initial report which has been filed with this Court after the evaluation period. In his report Dr. Ferrell states:

- A. He has evaluated Kyle and Avian Biedermann and the four Biedermann children. [p. 1]
- B. The evaluation period covered four months (April 17, 2001 to August 14, 2001). [p. 1]
- C. The evaluation consisted of:
 - (1) development of social history
 - (2) home visit evaluations
 - (3) the administration of psychological tests
 - (4) review of specific documents, including medical reports and other health care
 - (5) the CASA Report
 - (6) school records
 - (7) collateral reports and anecdotal data. [p. 1]

- D. Kyle Biedermann "did not fill out this form" when asked to describe his relationship with Kyla Biedermann, age 9. [p. 10]
- E. Kyla Biedermann related: "we" think mom has problems and then relates material or allegations reported by the father or suggested to her by him. She clearly is the father's biggest advocate and apparently discuss his feeling regarding the divorce often. [p. 10]
- F. Issues about the father sleeping nude with the children were also addressed and the Court Ordered that he not sleep with the children at all. He did not during the trip to Florida, but did permit one child each night to sleep in a bed right next to his in his room as a special treat. He reported that he did so because the children wanted to and they would have been unhappy if he had not. He failed to appreciate that perhaps this was not an altogether appropriate manner in which to address the Court's Order, nor was the children's desire sufficient to abdicate (minimally) his responsibility in this regard. He appears to at times push the envelope and may have difficulty in some areas with respect to boundaries, which does concern this examiner. [p. 14]
- G. Kyle Biedermann ... must cease and desist from further alienation of the children. [p. 16]

The audio taping of the conversations by Petitioner, Avian Ann Biedermann, has previously been discussed in front of and addressed by Judge Sherrill. It was recommended at the August 15, 2001 hearing by Dr. Ferrell to Judge Sherrill and Petitioner, Avian Ann Biedermann, that Petitioner continue to record Respondent's conversations with the minor children as a part of Respondent's "recovery" plan.

There were no objections to Dr. Ferrell's proposed "recovery" plan or that Petitioner continue to record Respondent's conversations with the children by any of the attorneys or Judge Sherrill. The lawyers in the room at the time were: John Nichols, Pamela Bergman, Kurt Rudkin, and Jody Halm. As Respondent's Attorney of Record, Jody Halm failed to make a timely objection to Petitioner's audio taping the conversations in question, to the admissibility of the audio tapes, or to the continuation of Petitioner's recording the conversations.

III.

Petitioner, Avian Ann Biedermann, consented to the interceptions on behalf of her minor children. Respondent, Kenneth Kyle Biedermann, impliedly consented to the interceptions by his prior knowledge of the taping and his failure to timely raise an objection to the admissibility of the audio tapes. Therefore, the recorded telephone conversations of

Kenneth Kyle Biedermann and the minor Biedermann children were legally obtained and are admissible.

In Respondent's Motion to Strike Brief in Support of Emergency Sua Sponte Order, he claims the conversations were illegally tape recorded and, therefore, they should be inadmissible. Respondent fails to state any authority to substantiate his claim of illegality.

Respondent also claims the audio tapes were withheld in violation of Discovery, but as of this date, there have been no formal requests for discovery from Respondent. The parties have only engaged in informal discovery. Sanctions for Abuse of Discovery cannot be given if the parties have not engaged in the formal discovery process.

A party who objects to the admissibility of evidence on the grounds that it was illegally obtained must show that the federal or state statutes require it to be excluded. Otherwise, the evidence must be admitted. *Sims v. Cosden Oil & Chemical Co.*, 663 S.W.2d 70 (Tex. App.—Eastland 1984, writ ref'd n.r.e.). In this case neither the federal wiretapping statute nor Texas Civil Practice and Remedies Code sections 123.001 to 124.004 require the audio tapes in question to be inadmissible.

The admissibility of evidence is moderated by Texas Rules of Civil Evidence 402. Rule 402 provides that "(a)ll relevant evidence is admissible, except as otherwise provided by constitution, by statute, by these rules or by other rules prescribed pursuant to statutory authority." Tex. R. Civ. Evid. 402; see *Sims v. Cosden Oil & Chemical Co.*, 663 S.W.2d 70 (Tex. App.—Eastland 1984, writ ref'd n.r.e.).

Interceptions or audio tapes from telephone conversations are only found to be in violation of the federal and state wiretapping statutes (illegal) if one of the parties has not consented to their obtainment. In this case, under the doctrine of vicarious consent, Petitioner, Avian Ann Biedermann, consented to the interception of her minor daughters' telephone conversation on their behalf.

In this case, Petitioner has consented on behalf of her minor children and Respondent has impliedly consented to the audio taping through his prior knowledge of the interception and his failure to timely raise an objection to the admissibility of the audio tapes. The doctrine of vicarious consent involves the parent or guardian's consent to allow the taping of minor children's telephone conversations. *Pollock v. Pollock*, 154 F.3d 601 (6th Cir. 1998); *Thompson v. Dulaney*, 838 F. Supp. 1535 (D. Utah 1993); *Silas v. Silas*, 680 So. 2d 368 (Ala. Civ. App. 1996); *Wagner v. Wagner*, 64 F. Supp. 2d 895 (U.S.D.C. Minn. 1999); *Campbell v. Price*, 2 F. Supp. 2d 1186 (E.D. Ark. 1998).

This case can be distinguished from the numerous cases involving spousal wiretapping. In the spousal-wiretapping cases the main issue is the lack of any party's consent, thus violating Federal and State Wiretapping statutes.

A. *The Federal Wiretapping Statute*

The federal wiretap statute prohibits the interception and use of illegally intercepted communications. 18 U.S.C. § 2510.

Several exceptions to the general prohibition against use of intercepted oral and wire communications exist. Section 2511(2)(d) of the federal statute provides that it is not unlawful for a person to intercept an oral or wire communication where this person is one of the parties to the communication or where one of the parties has given prior consent to such an interception. 18 U.S.C. § 2511 (2)(d).

The court in *Pollock v. Pollock* extended the consent exception in holding that a parent may vicariously consent on behalf of a minor child to the interception of a communication as long as the parent can demonstrate "a good faith, objectively reasonable basis for believing that it is necessary and in the best interest of the child." *Pollock*, 154 F.3d at 610; *see also Thompson*, 838 F. Supp. 1535; *see also Silas*, 680 So. 2d 368; *see also Wagner*, 64 F. Supp. 2d 895; *see also Campbell*, 2 F. Supp. 2d 1186.

In *the Anonymous* case, a father audio taped his eight-year-old little boy's conversations with the child's mother. *Anonymous v. Anonymous*, 558 F.2d 677 (2d Cir. 1977). The Court likened the audio taping to listening to the conversation on another extension, which is not prohibited by the federal wiretapping statute. *Anonymous*, 558 F.2d 677.

B. *Texas State Statutes*

Texas Civil Practice and Remedies Code applies only to interceptions of communications that are not consented to. In this case, the communications were audio taped with the consent of the primary custodian, Avian Ann Biedermann, on behalf of her minor children. The doctrine of vicarious consent is directly applicable to this case. Texas Civil Practice and Remedies Code sections 123.001 to 124.004, therefore, are not applicable in the case at hand.

The audio tapes of Kenneth Kyle Biedermann's telephone conversations with the minor Biedermann girls were not illegally intercepted. Respondent argues that the tapes were illegally intercepted because Kenneth Kyle Biedermann's permission was not directly obtained prior to the interception.

Respondent fails to cite any authority for his blanket statement that the "telephonic transcriptions" were "obtained illegally."

Purely verbal communications, which are not transmitted by wire or cable, are not

covered under the Texas statutes. Tex. Civ. Prac. & Rem. Code §§ 123.001-124.004; Texas Penal Code Ann. § 16.02. Several of the audio tapes recorded by Petitioner, Avian Ann Biedermann, captured in-person (not telephone) conversations between her and Respondent, Kenneth Kyle Biedermann. These conversations are clearly admissible and their legality should not be in question.

Respondent states that "there is no exception presently recognized under Texas law to allow an illegally recorded telephone conversation to be admissible as evidence." This is an inaccurate statement of the law by Respondent. Texas has recognized an exception for the admissibility of illegally intercepted telephone conversations. In *Cummings v. Jess Edwards*, the Court held illegally-taped telephone conversations may be used for impeachment purposes, provided the recording satisfies a seven-point test for admissibility. *Cummings v. Jess Edwards*, 445 S.W.2d 767, 773 (Tex. Civ. App.—Corpus Christi 1969, writ ref'd n.r.e.). This seven-point test requires that the offering party demonstrate:

1. that the recoding device was capable of taking testimony;
2. that the operator of the device was competent;
3. the authenticity and correctness of the recording;
4. that changes, additions, or deletions have not been made;
5. the manner of the preservation of the recording;
6. the identity of the speakers; and
7. that the testimony elicited was voluntarily made without any kind of inducement.

Cummings, 445 S.W.2d at 773. The admissibility of Conversations obtained in violation of the federal wiretapping statute have long been held to be admissible the purpose of impeachment. *Jacks v. State*, 394 N.E.2d 166 (1979).

If a party to the communication consents to the interception or if a person who is a party to the communication intercepts the communication it is not a violation of the state or federal statutes. Courts have recognized a general exception to the blanket prohibition of spousal wiretaps: when the intercepting party is a party to or has consented to the interception the wiretap is allowed. *Kotrla v. Kotrla*, 718 S.W.2d 853, 855 (Tex. App.—Corpus Christi, 1986, writ ref'd n.r.e.).

The state interception of communications statute does not prohibit audio taping conversations as long as one party consents to the taping. *Kotrla*, 718 S.W.2d at 855. In this case one party has consented to the interception. Petitioner, Avian Ann Biedermann, consented on behalf and in representation of her minor children. Only one party to the conversation needs to consent for the audio taping under both the federal and state statutes. This criteria has clearly been met in this case. One party has consented under the doctrine of vicarious consent.

In this case Petitioner, Avian Ann Biedermann, is not recording Respondent's telephone conversations with anyone else but the minor daughters. The oldest child in this case is nine-years-old and is unable to consent to the audio taping for herself. She is too young to understand all of the ramifications involved in this case, so the Petitioner consented for her. The Petitioner only consented to the audio taping after she had a reasonable good faith belief that the taping was necessary. In the later audio tapes, Kenneth Kyle Biedermann impliedly consented to the interceptions because he knew and acknowledged that the conversation was being taped.

Therefore, consent is not an issue in this case.

C. *The Doctrine of Vicarious Consent*

Courts across the country have held that a parent or guardian's consent is sufficient to allow the taping of the minor children's phone conversation, even if the parent or guardian was not a party, if the parent or guardian had an objectively reasonable good faith belief that the taping was necessary. *Pollock*, 975 F. Supp. 974; *Thompson*, 838 F. Supp. 1535; *Silas*, 680 So. 2d 368; *Campbell*, 2 F. Supp. 2d 1186; *Wagner*, 64 F. Supp. 2d 895.

As long as a parent has the good faith belief that recording is in the child's best interest, the parent may vicariously consent on behalf of the child to the recording of the child's cell phone conversations. *Pollock*, 154 F.3d 601; *Thompson*, 838 F. Supp. 1535; *Silas*, 680 So. 2d 368; *Campbell*, 2 F. Supp. 2d 1186; *Wagner*, 64 F. Supp. 2d 895.

The custodial parent's good faith concerns for the minor child's best interest may, without liability under the Federal Wiretapping Statute, empower the parent to intercept the child's conversations with the non-custodial parent. *Campbell*, 2 F. Supp. 2d 1186. There may be limited instances where a parent may give vicarious consent on behalf of a minor child to the taping of telephone conversations where that parent has a good faith, objectively reasonable basis for believing that the minor child is being abused, threatened, or intimidated by the other parent. *Silas*, 687 So. 2d 368; *Wagner*, 64 F. Supp. 2d 895.

Avian Biedermann began audio taping the conversations only after the children became hostile towards her. The Biedermann girls were engaging in behavior contrary to their normal dispositions. Petitioner observed the girls hide with the telephone on numerous occasions, only to discover they had been talking with Respondent, Kenneth Kyle Biedermann. The girls state legal terms and knowledge of the divorce proceedings that they would not have known, unless someone directly told them.

Prior to Petitioner audio taping the telephone conversations, Kenneth Kyle Biedermann was observed on several occasions obtaining an erection when he picked up his daughters. Avian Ann Biedermann's sisters also witnessed this display of sexual arousal by Kyle Biedermann. During the first social study Kenneth Kyle Biedermann did not deny the accusation stating that he would obtain an erection when picking up his children. The children began exhibiting outcries of sexual misconduct through little comments they would make. Ferrell's admonishment about sleeping naked w/ the girls.

Avian Biedermann is concerned for the emotional and physical well-being of her daughters. She began recording the children's telephone conversations with their father to determine whether Kenneth Kyle Biedermann was abusing, threatening, or manipulating their children.

In this case the tapes were not illegally obtained. Avian Ann Biedermann vicariously consented to the audio taping of conversations in question for her minor daughters. The doctrine of vicarious consent is directly applicable to this case. Avian Ann Biedermann is currently the primary custodial parent and she consented to the audio taping on behalf of her young minor daughters.

On June 16, 2001, the oral deposition of Petitioner, Avian Ann Biedermann, was taken. During Petitioner's deposition, Allen Halm, representing Respondent, asked Petitioner if she had ever recorded Respondent's telephone conversations with the Biedermann children. Petitioner answered that she had. Respondent has been on notice that Petitioner was audio taping his conversations with the children since at least June 16, 2001.

Respondent now argues that the audio tapes, both before June 16, 2001 and thereafter, were illegally obtained because Respondent did not consent to the interception. Respondent makes this argument without any authority to validate his blanket statements of the applicable law. Respondent has known that Petitioner was audio taping the conversations since June 16, 2001. Therefore, he has impliedly consented to the audio taping since at least June 16, 2001.

The audio tape recordings were made on Petitioner's home telephone and have been distributed to Respondent's attorney, Scott Monroe, Ad litem, Kurt Rudkin, and Dr. Ferrell, and one copy of the April 3, 2001 transcript to this Court, with Jody Halm's, Respondent's counsel at the time, approval and agreement. A client is bound by the actions of his attorney. *Portnow v. Berg*, 593 S.W. 2d 843, 845 (Tex. Civ. App.—Houston [1st Dist.] 1980, no writ); *In re Users Sys. Serv., Inc.*, 22 S.W.2d 331, 335 (Tex. 1999).

The audio taping of the conversations by Petitioner, Avian Ann Biedermann, has previously been discussed in front of and addressed by Judge Sherrill. It was recommended at the August 15, 2001 hearing by Dr. Ferrell to Judge Sherrill and Petitioner, Avian Ann Biedermann, that Petitioner continue to record Respondent's

conversations with the minor children as a part of Respondent's "recovery" plan. There were no objections to Dr. Ferrell's proposed "recovery" plan or that Petitioner continue to record Respondent's conversations with the children by any of the attorneys or Judge Sherrill. The lawyers in the room at the time were: John Nichols, Pamela Bergman, Kurt Rudkin, and Jody Halm. As Respondent's Attorney of Record, Jody Halm failed to make a timely objection to Petitioner's audio taping the conversations in question, to the admissibility of the audio tapes, or to the continuation of Petitioner's recording the conversations.

The admissibility of the audio tapes has, therefore, already been addressed by this court. There were no objections from Respondent's counsel, the Attorney Ad Litem, Petitioner's counsel or the presiding Judge. The time for objection as to the admissibility of the audio tapes has already passed. Finding the tapes in question to be admissible, Petitioner, Avian Ann Biedermann, was instructed to continue taping the conversations. The Court did not violate the federal wiretapping statute or the Texas wiretapping statute in allowing Petitioner to present the August 3, 2001 transcript as evidence. Respondent failed to object to the admissibility of the audio taped conversations and now Respondent has waived his objection by failing to timely raise it.

The Brief in Support of Emergency Sua Sponte Order does not contain illegally obtained evidence. Respondent completely neglected to include any supporting authority for his claims of illegality and inadmissibility. The issue of admissibility and illegality of the interceptions has already been decided by this Court at the August 15, 2001 hearing. Respondent, through his Attorney of Record, failed to timely object to the audio tapes at the hearing when the issue was raised.

Petitioner, Avian Ann Biedermann, consented to the interceptions on behalf of her minor children. Respondent, Kenneth Kyle Biedermann, impliedly consented to the interceptions by his prior knowledge of the taping and his failure to timely raise an objection to the admissibility of the audio tapes. Therefore, the recorded telephone conversations of Kenneth Kyle Biedermann and the minor Biedermann children were legally obtained and are admissible.

IV.

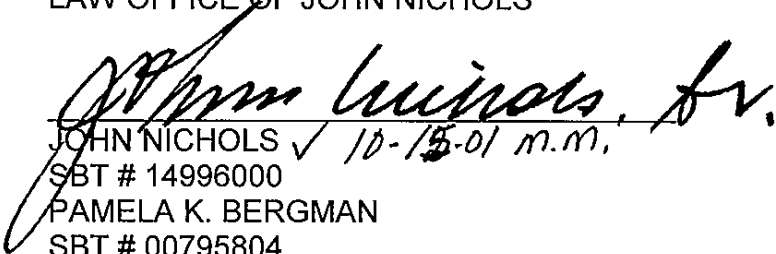
Prayer

Petitioner prays that the Court continue to hold the audio taped conversations of Respondent, Kenneth Kyle Biedermann, and the minor Biedermann children to be admissible.

Petitioner prays that this Court denies Respondent's Motion to Strike Brief in Support of Emergency Sua Sponte Order.

Respectfully submitted,

LAW OFFICE OF JOHN NICHOLS


JOHN NICHOLS ✓ 10-15-01 m.m.

SBT # 14996000

PAMELA K. BERGMAN

SBT # 00795804

1301 McKinney, Suite 3636

Houston, Texas 77010

713/654-0708

713/654-0706 FAX

ATTORNEY FOR AVIAN ANN BIEDERMANN

Certificate of Service

I certify that a true copy of the above was served on each attorney or party in accordance with the Texas Rules of Civil Procedure on this the 10 day of October, 2001.


JOHN NICHOLS

Attorney for Avian Ann Biedermann

Respectfully submitted,

LAW OFFICE OF JOHN NICHOLS



JOHN NICHOLS
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ATTORNEY FOR AVIAN ANN BIEDERMANN

Certificate of Service

I certify that a true copy of the above was served on each attorney or party in accordance with the Texas Rules of Civil Procedure on this the 10 day of October, 2001.



JOHN NICHOLS
Attorney for Avian Ann Biedermann

FILED
 At 11:43 O'clock A.M.

No. 9284

OCT 12 2001

IN THE MATTER OF
 THE MARRIAGE OF

 AVIAN ANN BIEDERMANN
 AND
 KENNETH KYLE BIEDERMANN

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§

IN THE DISTRICT COURT OF

 BARBARA MEYER
 DISTRICT CLERK
 GILLESPIE COUNTY, TEXAS

 GILLESPIE COUNTY, TEXAS

[Handwritten signature]
 Deputy

AND IN THE INTERESTS OF
 KYLA RAE BIEDERMANN,
 EMILY LAINE BIEDERMANN,
 LOREN NOEL BIEDERMANN AND
 DANA TRUE BIEDERMANN, MINOR
 CHILDREN

216TH JUDICIAL DISTRICT

**RESPONSE TO RESPONDENT'S MOTION FOR SANCTIONS
 FOR ABUSE OF DISCOVERY**

Comes now, Avian Ann Biedermann, Petitioner, by and through her Attorney of Record, John F. Nichols, Sr., moving this Court to deny Respondent's Motion for Sanctions for Abuse of Discovery, showing the Court as follows:

I.

On January 25, 2001, Petitioner was served with Texas Rules of Civil Procedure Rule 194 Request for Disclosures, which appears to not be filed with this Court. On February 12, 2001, Petitioner responded and filed with this Court answers to Respondent's Request for Disclosure. Petitioner then filed her Certificate of Written Discovery, Petitioner's Request for Production or Inspection of Documents, Petitioner's 1st Set of Written Interrogatories to Respondent, and Petitioner's 2nd Set of Written Interrogatories to Respondent on February 15, 2001. Petitioner received a letter on February 22, 2001 stating in pertinent part:

Pursuant to our mediation agreement regarding informal discovery, I respectfully request the following items for production:

- 4) All audio tapes of conversations between Kyle Biedermann, Avian Biedermann or any member of either parties family that constitute or contain matters relevant to this lawsuit,

As per our mediation agreement, this request is made within ten days of that agreement and response to this request for production is due within ten days of receipt at the Law Offices of A.J. Halm, 307 W. Main, Suite 101, Fredericksburg, Texas 78624.

The parties then agreed to extend the informal discovery deadline until March 22, 2001 by filing a Rule 11 Agreement with the Court on March 1, 2001. On May 10, 2001, the parties filed a Rule 11 Agreement extending the deadlines on Rule 194 Requests for Disclosures. On May 14, 2001, Petitioner filed Requests for Disclosure with the Court.

On June 7, 2001, Petitioner filed Avian A. Biedermann's Response to Request for Production with the Court. In response to Respondent's informal request for production, Petitioner answered: "Has been produced. Will Supplement." Petitioner filed her Supplemental Responses to Request for Production on June 13, 2001, answering "All recordings were previously produced." Recording of Kenneth Kyle Biedermann's conversations had been produced as of that date. Petitioner continued to intercept Respondent's conversations with the Biedermann children after the Supplemental Response was filed.

Respondent's new Attorney of Record, Scott Monroe, filed with this Court a Motion to Compel Production of Discoverable Material on September 7, 2001. In response Petitioner sent copies of the written transcripts of the recorded telephone conversations to Scott Monroe, Kurtis Rudkin, and Dr. Jack Ferrell on September 26, 2001. On October 1, 2001, Petitioner sent Respondent by and through his Attorney of Record, Scott Monroe, a letter stating that Petitioner sent the micro-tapes of the interceptions to a professional copy service to be copied for Respondent.

Until Respondent, represented by Scott Monroe, filed Motion to Compel Production of Discoverable Material, all discovery requests by Respondent were conducted informally. Respondent did not file his requests with the Court and was always clear to indicated the parties agreed to informal discovery processes. Petitioner sought to adhere to Respondent's Motion to Compel by timely sending him a copy of the written transcripts and sending the audio tapes to be copied.

Respondent by and through his Attorney of Record, A.J. Halm only answered and responded to Petitioner's Request for Informal Discovery Three. He failed to answer Petitioner's Requests for Informal Discovery One, Two or Four, Petitioner's Request for Production or Inspection of Documents, Petitioner's 1st Set of Written Interrogatories to Respondent, Petitioner's 2nd set of Written Interrogatories to Respondent or Petitioner's Rule 194 Requests for Disclosure.

Respondent's Motion for Sanctions for Abuse of Discovery is unfounded and goes beyond the scope of Rule 15 Sanctions. Tex. R. Civ. P. 215.

Texas Rules of Civil Procedure Rule 215.1 provides in pertinent part:

A party, upon reasonable notice to other parties and all other persons affected thereby, may apply for sanctions or an order compelling discovery as follows:

(b) Motion.

- (3) if a party fails:
 - (A) to serve answers or objections to interrogatories submitted under Rule 197, after proper service of the interrogatories; or
 - (B) to answer an interrogatory submitted under Rule 197; or
 - (C) to serve a written response to a request for inspection submitted under Rule 196, after proper service of the request; or
 - (D) to respond that discovery will be permitted as requested or fails to permit discovery as requested in response to a request for inspection submitted under Rule 196;

The discovering party may move for an order compelling a designation, an appearance, an answer or answers, or inspection or production in accordance with the request, or apply to the court in which the action is pending for the imposition of any sanctions authorized by Rule 215.2(b) without the necessity of first having obtained a court order compelling such discovery.

- (c) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

Texas Rules of Civil Procedure Rule 197 provides in pertinent part:

A party may serve on another party—no later than 30 days before the end of the discovery period—written interrogatories to inquire about any matter within the scope of discovery except matters covered by Rule 195.

Texas Rules of Civil Procedure Rule 196 provides in pertinent part:

A party may serve on another party—no later than 30 days before the end of the discovery period—a request for production or for inspection, to inspect, sample, test, photograph and copy documents or tangible things within the scope of discovery.

There must be some evidence to show an abuse of discovery before sanctions can be imposed. *Global Serv., Inc. v. Bianchi*, 901 S.W. 2d 934, 938 (Tex. 1995). An imposition of sanctions cannot be based merely on a party's bald assertions. *Id.* at 938.

In *AIU Ins. Co. v. Mehaffy*, the trial court incorrectly issued a sanctions order that exceeded the court's power under Rule 215, going beyond the scope of the enumerated sanctions. *AIU Ins. Co. v. Mehaffy*, 942 S.W.2d 796, 800 (Tex. App.—Beaumont 1997, no writ).

Respondent's Motion for Sanctions for Abuse of Discovery is beyond the scope and

intention of Rule 215. Tex. R. Civ. P. 215. Respondent has repeatedly failed to comply with the informal discovery requests made by Petitioner. Avian Ann Biedermann has been forthright with all of her disclosures. Petitioner responded to Respondent's Motion to Compel with the production of documents he requested. The Motion for Sanctions should be denied.

II.

Texas Civil Practice and Remedies Code applies only to interceptions of communications that are not consented to. In this case, the communications were audio taped with the consent of the primary custodian, Avian Ann Biedermann, on behalf of her minor children. The doctrine of vicarious consent is directly applicable to this case. Texas Civil Practice and Remedies Code sections 123.001 to 124.004, therefore, are not applicable in the case at hand.

The audio tapes of Kenneth Kyle Biedermann's telephone conversations with the minor Biedermann girls were not illegally intercepted. Respondent argues that the tapes were illegally intercepted because Kenneth Kyle Biedermann's permission was not directly obtained prior to the interception. Respondent cites Texas Civil Practice and Remedies Code, which creates a civil cause of action for a person whose communication is intercepted in violation of the statute. Tex. Civ. Prac. & Rem. Code §§ 123.001-124.004. Respondent also claims the "illegal" interception amounts to a felony. Texas Penal Code states: illegal interception or use or disclosure of the contents of the interception may be a felony. Texas Penal Code Ann. § 16.02. Since the interceptions themselves were not illegally obtained, Respondent does not have a civil cause of action against Petitioner and the commission of a felony has not occurred.

Purely verbal communications, which are not transmitted by wire or cable, are not covered under the Texas statutes. Tex. Civ. Prac. & Rem. Code §§ 123.001-124.004; Texas Penal Code Ann. § 16.02.

If a party to the communication consents to the interception or if a person who is a party to the communication intercepts the communication it is not a violation of the federal or state (civil or criminal) statutes. In *Kotrla v. Kotrla*, the court recognized the general exception to the blanket prohibition of spousal wiretaps: when the intercepting party is a party to or has consented to the interception the interception is not prohibited by the statute. *Kotrla v. Kotrla*, 718 S.W.2d 853, 855 (Tex. App.—Corpus Christi, 1986, writ ref'd n.r.e.). In this case one party has consented to the interception. Petitioner, Avian Ann Biedermann consented on behalf and in representation for her minor children. Only one party to the conversation needs to consent for the audio taping under both the federal and state (civil and criminal) statutes. This criteria is met in this case. One party has consented under the doctrine of vicarious consent. Therefore, Petitioner's interception does not amount to a violation of the Texas Civil Practice and Remedies Code or the Texas Penal Code.

III.

In this case, Petitioner has consented on behalf of her minor children and Respondent has impliedly consented to the audio taping through his prior knowledge of the interception and his failure to timely raise an objection to the admissibility of the audio tapes.

Interceptions or audio tapes from telephone conversations are only found to be in violation of the federal and state wiretapping statutes (illegal) if one of the parties has not consented to their obtainment. In this case Petitioner, Avian Ann Biedermann, consented to the interception of her minor daughters' telephone conversations on their behalf.

The doctrine of vicarious consent involves the parent or guardian's consent to allow the taping of minor children's telephone conversations. *Pollock v. Pollock*, 154 F.3d 601 (6th Cir. 1998); *Thompson v. Dulaney*, 838 F. Supp. 1535 (D. Utah 1993); *Silas v. Silas*, 680 So. 2d 368 (Ala. Civ. App. 1996); *Wagner v. Wagner*, 64 F. Supp. 2d 895 (U.S.D.C. Minn. 1999); *Campbell v. Price*, 2 F. Supp. 2d 1186 (E.D. Ark. 1998).

A party who objects to the admissibility of evidence on the grounds that it was illegally obtained must show that the federal or state statutes require it to be excluded. Otherwise, the evidence must be admitted. *Sims v. Cosden Oil & Chemical Co.*, 663 S.W.2d 70 (Tex. App.—Eastland 1984, writ ref'd n.r.e.). In this case neither the federal wiretapping statute nor Texas Civil Practice and Remedies Code sections 123.001 to 124.004 require the audio tapes in question to be inadmissible.

The admissibility of evidence is moderated by Texas Rules of Civil Evidence 402. Rule 402 provides that "(a)ll relevant evidence is admissible, except as otherwise provided by constitution, by statute, by these rules or by other rules prescribed pursuant to statutory authority." Tex. R. Civ. Evid. 402; see *Sims v. Cosden Oil & Chemical Co.*, 663 S.W.2d 70 (Tex. App.—Eastland 1984, writ ref'd n.r.e.).

The audio taping of the conversations by Petitioner, Avian Ann Biedermann, has previously been discussed in front of and addressed by Judge Sherrill. It was recommended at the August 15, 2001 hearing by Dr. Ferrell to Judge Sherrill and Petitioner, Avian Ann Biedermann, that Petitioner continue to record Respondent's conversations with the minor children as a part of Respondent's "recovery" plan.

There were no objections to Dr. Ferrell's proposed "recovery" plan or that Petitioner continue to record Respondent's conversations with the children by any of the attorneys or Judge Sherrill. The lawyers in the room at the time were: John Nichols, Pamela Bergman, Kurt Rudkin, and Jody Halm. As Respondent's Attorney of Record, Jody Halm failed to make timely objections to Petitioner's audio taping the conversations in question, to the admissibility of the audio tapes, or to the continuation of Petitioner's recording the

conversations.

The legality and admissibility of the audio tapes has, therefore, has already been addressed by this court. There were no objections from Respondent's counsel, the Attorney Ad Litem, Petitioner's counsel or the presiding Judge. The time for objection as to the admissibility of the audio tapes has already passed. Finding the tapes in question to be legal and admissible, Petitioner, Avian Ann Biedermann, was instructed to continue taping the conversations. The Court did not violate the federal wiretapping statute or the Texas wiretapping statute in allowing Petitioner to present the August 3, 2001 transcript as evidence. Respondent failed to object to the legality and admissibility of the audio taped conversations and now Respondent has waived his objections by failing to timely raise them.

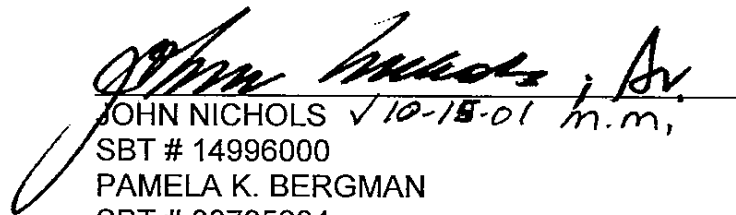
IV.
Prayer

Petitioner prays that the Court continue to hold the audio taped conversations of Respondent, Kenneth Kyle Biedermann, and the minor Biedermann children to be legal and admissible.

Petitioner prays that this Court denies Respondent's Motion for Sanctions for Abuse of Discovery.

Respectfully submitted,

LAW OFFICE OF JOHN NICHOLS


JOHN NICHOLS ✓ 10-18-01 h.m.
SBT # 14996000

PAMELA K. BERGMAN

SBT # 00795804

1301 McKinney, Suite 3636

Houston, Texas 77010

713/654-0708

713/654-0706 FAX

Attorney for Avian Ann Biedermann

Certificate of Service

I certify that a true copy of the above was served on each attorney or party in accordance with the Texas Rules of Civil Procedure on this the 1st day of October, 2001.



JOHN NICHOLS

Attorney for Avian Ann Biedermann

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

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JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization:
Personal Injury - Civil Trial-Family Law -
National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 112

October 10, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

CM-RRR 7001 1940 0003 4532 3868

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Please take the indicated action: 1. **Motion for Protective Order on Notice of Intention to Take Oral Deposition of Avian Ann Biedermann**

- (X) File among papers in the above cause.
- (X) File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger.
- () A filing fee is enclosed in the amount of \$ ____.
- () Present to Judge for signature and/or hearing date.
- () Demand for jury.
- (X) By copy hereof, those persons whose names appear below are being notified of this filing.

FILED
At 10:50 o'clock A.M.

Very truly yours,

John Nichols
JOHN NICHOLS
For the Firm

OCT 18 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By Barbara Meyer
Deposits

Enclosure

cc: Scott F. Monroe
Kurtis Rudkin

Via CM-RRR 7001 1940 0003 4532 3875
and Via Fax: 830/257-7079
Via CM-RRR 7001 1940 0003 4532 3882
and Via Fax: 830/249-6315

Avian Ann Biedermann
Pamela K. Bergman

No. 9284

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
AVIAN ANN BIEDERMANN	§	
AND	§	
KENNETH KYLE BIEDERMANN	§	
	§	GILLESPIE COUNTY, T E X A S
AND IN THE INTERESTS OF	§	
KYLA RAE BIEDERMANN,	§	
EMILY LAINE BIEDERMANN,	§	
LOREN NOEL BIEDERMANN AND	§	
DANA TRUE BIEDERMANN, MINOR	§	
CHILDREN	§	216TH JUDICIAL DISTRICT

**Motion for Protective Order
on Notice of Intent to Take Oral Deposition
of Avian Ann Biedermann**

Avian Ann Biedermann, through counsel, moves for a protective order show unto the court as follows:

I.

Scott Monroe, counsel for Kenneth Kyle Biedermann, has issued a notice to take the deposition of Avian Ann Biedermann on October 17, 2001. The purpose of the deposition, as stated by counsel, is to inquire into the recording of the conversations of Kenneth Kyle Biedermann and others. Satisfactory explanation of the "whys and the wherefores" of the recording have been given to counsel in an exchange of correspondence and this deposition is not necessary. See attached letter of October 3, 2001. Still further, ample opportunity for examination or cross-examination of Avian Biedermann will be available to opposing counsel at the trial set for December 10, 2001.

Prayer

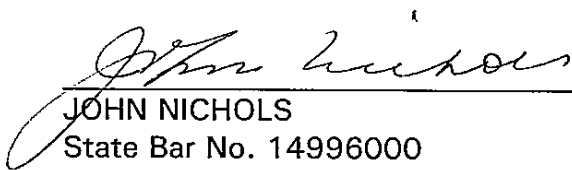
Wherefore, premises considered, Avian Biedermann prays that the protective order requested by granted as it relates to the taking of her deposition again. Avian Ann Biedermann prays for general relief.

FILED
At 12:55 O'clock AM

OCT 18 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Signature]
Deputy

LAW OFFICES OF JOHN NICHOLS

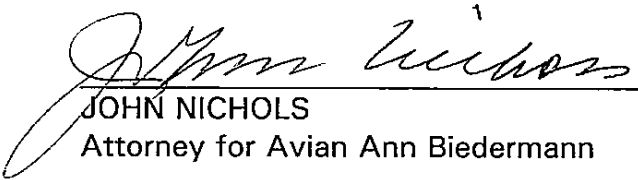


JOHN NICHOLS
State Bar No. 14996000
Pamela K. Bergman
State Bar No. 00795804
Chevron Tower
1301 McKinney, Suite 3636
Houston, Texas 77010
713/654-0708 Telephone
713/654-0706 Fax

Attorney for Avian Ann Biedermann

Certificate of Conference

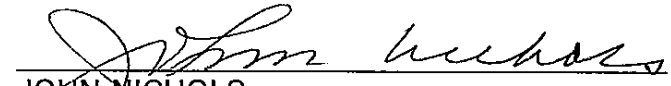
I certify that a reasonable effort has been made to resolve the discovery dispute without the necessity of court intervention and has failed.



JOHN NICHOLS
Attorney for Avian Ann Biedermann

Notice of Hearing

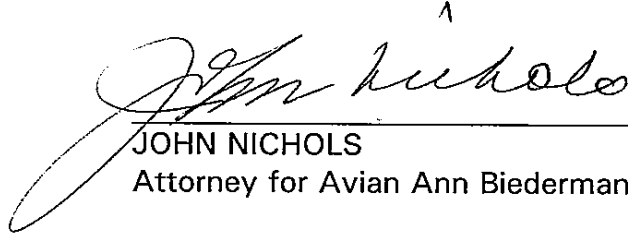
The above motion is set for a hearing on the _____ day of _____,
2001 at _____ .m.



JOHN NICHOLS
Attorney for Avian Ann Biedermann

Certificate of Service

I certify that a true copy of the above was served on each attorney or party in accordance with the Texas Rules of Civil Procedure on this the 16 day of October, 2001.



JOHN NICHOLS
Attorney for Avian Ann Biedermann

LAW OFFICES of JOHN NICHOLS

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1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

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Personal Injury-Civil Trial-Family Law
Member National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 114

October 3, 2001

Scott F. Monroe
Pollard & Monroe
Attorneys at Law
951 Main Street
Kerrville, Texas 78028

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann and Kenneth Kyle Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

Dear Scott:

I have your letter of October 2, 2001 regarding Avian Biedermann's deposition. I politely decline your request. Her deposition is unnecessary. In response to the inquiries you would have, per your October 2, 2001 letter, I believe I am correct in stating to you that:

1. Conversations between Kyle and the children which were recorded were transcribed and sent to you. Some of the recordings took place face to face and not on the telephone and others with Avian on the telephone with Kyle. Although these are not noted in the transcriptions, your client should be able to assist you in this regard. If you are not able to do that, I will be more than happy to get a list of what was recorded on the telephone and what was not.
2. The recordings were made on the home telephone and have been distributed to you, Kurt Rudkin, Dr. Ferrell, and one copy of the April 3, 2001 transcription to the court, with Jody Halm's approval and agreement.
3. Avian Biedermann acted alone and not in concert with any third parties.

SCOTT MONROE

October 3, 2001

Page 2

You need to be aware that all of this was discussed in front of Judge Sherrill and it was recommended on August 15, 2001 by Dr. Ferrell to Avian Biedermann, as a part of your client's "recovery" plan, that she continue to record Mr. Biedermann's conversations with the children. There were no objections to this recommendation by any lawyer in the room. The lawyers in the room at the time were: John Nichols, Pamela Bergman, Kurt Rudkin, and Jody Halm. Surely Jody Halm told his client of this recommendation.

Very truly yours,


JOHN NICHOLS
For the Firm

JN:dh

cc: Kurt Rudkin (w/ 10/2/01 letter)
Pamela K. Bergman (w/ 10/2/01 letter)
Avian Biedermann (w/ 10/2/01 letter)

POLLARD & MONROE

ATTORNEYS AT LAW

951 MAIN STREET
KERRVILLE, TEXAS 78028

TELEPHONE: (830) 898-7500

TELECOPIER: (830) 257-7079

E-MAIL: tpollard@kmc.com

E-MAIL: smonroe@kmc.com

L. W. POLLARD (1902-1981)

THOMAS W. POLLARD

SCOTT F. MONROE

October 2, 2001

Mr. John Nichols
Attorney at Law
Law Offices of John Nichols
Chevron Tower
1301 McKinney Street, Ste. 3636
Houston, Texas 77010

RE: Cause No. 9284; In the Matter of the Marriage of Avian Ann Biedermann and Kenneth Kyle Biedermann and In the Interest of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana Truc Biedermann, Minor Children; In the District Court of Gillespie County, Texas, 216th Judicial District

Dear John:

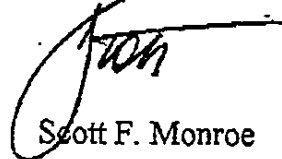
In light of the counterclaim I have filed, I would like to take Avian's deposition again. The purpose of the deposition would be primarily to determine the number of phone conversations between Kyle and the children which were recorded, who made the recordings, to whom the recordings were distributed, or with whom the recordings were discussed, whether Avian was acting alone or in concert with other 3rd parties, and whether or not anyone advised Avian to record these conversations. It would not be my intention to rehash any of the subjects previously covered by Jody Halm.

Please let me know at your earliest convenience whether we can schedule this deposition by agreement, or whether I will need to seek court authority on October 9, 2001. Also, if it would be your intention to have Avian take the 5th, please so advise.

Page 2
Nichols letter
October 2, 2001

Thank you very much for your cooperation.

Very truly yours,



Scott F. Monroe

SFM/scp

cc:

Mr. Kyle Biedermann

Mr. Kurt S. Rudkin



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

November 15, 2001

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main, Room 204
Fredericksburg, TX 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Barbara:

Please file the enclosed Letter in the above-referenced court file. Copies of the Letter have been sent to Scott Monroe, Pam Bergman and Kurt Rudkin.

Very truly yours,

A handwritten signature in black ink, appearing to read "Becky Henderson".

Becky Henderson
Court Coordinator
198th & 216th District Courts

BH:mfb

Enclosures

FILED
At 1:18 O'clock P.M.

NOV 19 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

A handwritten signature in black ink, appearing to read "Barbara Meyer".

JOB	PHONE NUMBER/ADDRESS	START TIME	PAGES	MODE	STATUS
81	9,,17136540706,617....	11/15 4:19PM.....	1/ 1	BC	COMPLETED... <i>P. Bergman</i>
81	9,,12496315,617.....	11/15 4:20PM.....	1/ 1	BC	COMPLETED... <i>K. Rudkin</i>
81	#2577079.....	11/15 4:36PM.....	0/ 1	BC	REMOTE FAX WAS BUSY..... 960

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

November 15, 2001

Ms. Pamela Bergman
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

Mr. Kurt Rudkin
Attorney at Law
1414 E. Blanco Rd, Suite 3-B
Boerne, Texas 78006

Mr. Scott Monroe
Attorney at Law
951 Main Street
Kerrville, Texas 78028

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Counsel:

The above-referenced matter which is presently set for hearing on December 10, 2001 at 9:00 a.m. has been moved to 1:15 p.m. on the same day in Gillespie County. In the event that this matter is not concluded on the 10th, we will reconvene on December 11, 2001 at 10:00 a.m. in Kerrville.

Please let me know if you have any questions.

Very truly yours,

Becky Henderson

Becky Henderson
Court Coordinator
198th & 216th District Courts

FILED
At 1:15 o'clock AM

cc: Barbara Meyer

NOV 19 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Barbara Meyer
Deputy

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

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JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization:
Personal Injury - Civil Trial-Family Law -
National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 112

November 21, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

CM RRR 7000 1670 0004 0651 8467

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children, In the 216th Judicial District of Gillespie County, Texas*

Dear Mrs. Meyer:

Please take the indicated action: **1. Petitioner's Third Amended Petition for Divorce**

- File among papers in the above cause.
- File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger.
- A filing fee is enclosed in the amount of \$_____.
- Present to Judge for signature and/or hearing date.
- Demand for jury.
- By copy hereof, those persons whose names appear below are being notified of this filing.

Very truly yours,

Shannon Russell
For the Firm

FILED
At 12:100'clock PM

NOV 26 2001

**BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS**

**CM RRR 7001 1670 0004 0651 8481
CM RRR 7000 1670 0004 0651 8474**

Enclosure

cc. w/encls.:

Avian Ann Biedermann
Scott Monroe
Kurtis Rudkin

FILED

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

§
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IN THE DISTRICT COURT OF

GILLESPIE COUNTY, T E X A S

216TH JUDICIAL DISTRICT

Petitioner's Third Amended Petition for Divorce

Discovery Level

Discovery in this case is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

Parties

This suit is brought by Avian Anne Biedermann, Petitioner, who is forty (40) years of age and resides at 110 W. Hackberry St., Fredericksburg, Texas and against Kenneth Kyle Biedermann, Respondent, is forty-one (41) years of age and resides at 110 W. Hackberry St., Fredericksburg, Texas and also against BL & H, Inc. d/b/a Biedermann's Ace Hardware. Co-Respondent is a corporation organized under the laws of the State of Texas.

Domicile

Petitioner has been a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding ninety-day period.

Service

No service is necessary on Kenneth Kyle Biedermann as he has appeared and answered suit.

FILED
At 12:11 O'clock P.M.

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Signature]

No service is necessary on B L & H, Inc. d/b/a Biedermann's Ace Hardware, Co-Respondent, as it has appeared and answered suit.

Protective Order Statement

No protective order under Title 4 of the Texas Family Code is in effect, and no application for a protective order is pending with regard to the parties to this suit.

Dates of Marriage and Separation

The parties were married on or about April 22, 1989 and have ceased to live together as husband and wife.

Grounds for Divorce

The marriage has become insupportable because of discord or conflict of personalities between Petitioner and Respondent that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

Respondent is guilty of cruel treatment toward Petitioner of a nature that renders further living together insupportable.

Children of the Marriage

Petitioner and Respondent are parents of the following children of this marriage who are not under the continuing jurisdiction of any other court:

Name: Kyla Rae Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: January 26, 1992
Present address: 110 W. Hackberry St., Fredericksburg, Texas

Name: Emily Laine Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: July 15, 1993
Present address: 110 W. Hackberry St., Fredericksburg, Texas

Name: Loren Noel Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: December 20, 1994
Present address: 110 W. Hackberry St., Fredericksburg, Texas

Name: Dana True Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: March 22, 1996
Present address: 110 W. Hackberry St., Fredericksburg, Texas

There are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships affecting the children the subject of this suit.

Information required by Section 152.09 of the Texas Family Code has been provided attached to Petitioner's Original Petition for Divorce.

No property of consequence is owned or possessed by the children the subject of this suit.

Petitioner believes that Petitioner and Respondent will enter into a written agreement containing provisions for conservatorship and support of the children. If such an agreement is not made, Petitioner requests the Court to make orders for conservatorship and support of the children.

The appointment of Petitioner and Respondent as joint managing conservators would not be in the best interest of the children. Petitioner, on final hearing, should be appointed sole managing conservator, with all the rights and duties of a parent sole managing conservator, and Respondent should be ordered to make payments for the support of the children in the manner specified by the Court. Petitioner requests that the payments for the support of the children survive the death of Respondent and become the obligation of Respondent's estate.

In the alternative, Petitioner and Respondent, on final hearing, should be appointed joint managing conservators, with all the rights and duties of parent conservators with the following provisions:

Petitioner would be designated as the conservator who has the exclusive right to make decisions concerning the children's education; and the exclusive right to consent to medical, dental, and surgical treatment involving invasive procedures and to consent to psychiatric and psychological treatment of the children.

Petitioner should be designated as the conservator who has the exclusive right to determine the primary residence of the children. Respondent should be ordered to make payments for the support of the children in the manner specified by the Court. Petitioner requests that the payments for the support of the children survive the death of Respondent and become the obligation of the Respondent's estate.

The residence of the children should be restricted to Gillespie County and any county contiguous to it.

Repairs to the House at 110 Hackberry as Child Support

As child support, Petitioner requests the Court to order Respondent to finish the repairs to the family home at 110 Hackberry in Fredericksburg, Texas. Respondent began repairing the home prior to this divorce suit. Respondent failed to finish the repairs he began and has subsequently created a dangerous environment for the children, the subject of this suit. Petitioner requests the Court to order Respondent to finish the repairs prior to the final deposition of the case as child support.

Petitioner asks the Court to take judicial notice of the dangerous condition the house at 110 Hackberry presents to the children, the subject of this suit. Petitioner requests the Court to order Respondent to repair the home for the protection and support of the children, providing the children with the appropriate standard of living accommodations.

Division of Community Property

Petitioner believes Petitioner and Respondent will enter into an agreement for the division of their estate. If such an agreement is made, Petitioner requests the Court to approve the agreement and divide their estate in a manner consistent with the agreement. If such an agreement is not made, Petitioner requests the Court to divide their estate in a manner that the Court deems just and right, as provided by law.

Petitioner should be awarded a disproportionate share of the parties' estate for the following reasons, including but not limited to:

- a. fault in the breakup of the marriage;
- b. fraud on the community;
- c. benefits the innocent spouse may have derived from the continuation of the marriage;
- d. disparity of earning power of the spouses and their ability to support themselves;
- e. the spouse to whom conservatorship of the children is granted;
- f. needs of the children of the marriage;
- g. education and future employability of the spouses;

- h. tax consequences of the division of property;
- i. earning power, business opportunities, capacities, and abilities of the spouses;
- j. need for future support;
- k. nature of the property involved in the division;
- l. increase in value of separate property through community efforts by time, talent, labor, and effort;
- m. reimbursement;
- n. expected inheritance of a spouse;
- o. attorney's fees to be paid;
- p. the size and nature of the separate estates of the spouses;
- q. actual fraud committed by a spouse, individually or in concert with relatives;
- r. constructive fraud committed by a spouse.

Separate Property

Petitioner owns certain separate personal property that is not part of the community estate of the parties, and Petitioner requests the Court to confirm that separate property as Petitioner's separate property and estate.

Reimbursement

Petitioner requests the Court to reimburse the community estate for funds or assets expended by the community estate to benefit or enhance Respondent's separate estate. The community estate has not been adequately compensated for or benefitted from the expenditure of those funds or assets, and a failure by the Court to allow reimbursement to the community estate will result in an unjust enrichment of Respondent's separate estate at the expense of the community estate.

Petitioner requests the Court to reimburse the community estate for the value of community time, talent, toil, and effort expended by Respondent to benefit or enhance Respondent's separate estate. The use by Respondent of community time, talent, toil, and effort was beyond what was reasonably necessary to maintain, manage, and preserve

Respondent's separate estate, and for which the community estate was not adequately compensated. As a result, the failure to allow reimbursement to the community estate will result in the unjust enrichment of Respondent's separate estate.

Economic Contribution

Petitioner requests the Court to award to the community estate an equitable lien on property to secure a claim for economic contribution against the value of Respondent's separate property for financial contribution expended by the community estate to benefit or enhance that separate estate.

Petitioner requests the Court to award to Petitioner's separate estate an equitable lien on property to secure a claim for economic contribution against the value of the community property due to the financial contribution expended by Petitioner's separate estate to benefit or enhance the community estate.

Petitioner requests the Court to award to Petitioner's separate estate an equitable lien on property to secure a claim for economic contribution against the value of Respondent's separate property due to the financial contribution expended by Petitioner's separate estate to benefit or enhance Respondent's separate estate.

Petitioner requests the Court to award to the community estate an equitable lien on property to secure a claim for economic contribution against the value of Respondent's separate property as a result of the use of community property to discharge all or part of a debt on separate property owned by Respondent.

Petitioner requests the Court to award to Petitioner's separate estate an equitable lien on property to secure a claim for economic contribution against the value of the community property to discharge all or part of a debt on property owned by the community.

Petitioner requests the Court to award to Petitioner's separate estate an equitable lien on property to secure a claim for economic contribution against the value of Respondent's separate property as a result of the use of Petitioner's separate property to discharge all or part of a debt on separate property owned by Respondent.

Request for Receiver and Declare Note a Nullity

Petitioner owns an interest in B L & H, Inc., doing business as "Biedermann's Ace Hardware" in Fredericksburg, Texas. Petitioner believes and alleges that Respondent, who also owns an interest in B L & H, Inc., has, over time since 1994, caused or allowed the gross receipts of the business to decline during the most serious period of domestic unrest between Petitioner and Respondent. Only after this issue was raised did the receipts increase. Petitioner will not realize the maximum value of her interest in the business

unless a Receiver is appointed to take control of the business and either bring in new management or rehabilitate the business to its optimum condition and sell it to a bona fide purchaser for value in an arms length transaction.

Additionally, Petitioner and Respondent executed a community property promissory note to Respondent's parents. For purposes of putting a value on the business, Petitioner requests this Court to place a \$0 value on the note as the parents have previously indicated a willingness to forgive the note.

Request for Permanent Injunction

Petitioner requests the Court, after trial on the merits, to grant the following permanent injunctions:

1. Communicating with the other party in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.
2. Threatening the other party or a family member of either party in person, by telephone, or in writing to take unlawful action against any person.
3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.
4. Causing bodily injury to the other party or to a family member of either party.
5. Threatening the other party or a family member of either party with imminent bodily injury.
6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the other party.
7. Engaging in conduct designed to alienate the children against the other parent or the other parent's family members.
8. Discussing this divorce case, the outcome of this case, or any related issue, including any settlement agreement or future litigation of related issues, with the children except to explain any changes affecting the time they spend with each parent.
9. Discussing this divorce case, the outcome of this case, or any related issue, including any settlement agreement or future litigation of related issues

within the children's spheres of awareness, or allowing the children to remain in the presence of anyone doing the same.

10. Discussing any issue related to the scheduling of possession periods, including any agreement or conflict between the parents with the children or within the children's spheres of awareness, or allowing the children to remain in the presence of anyone doing the same.
11. Discussing financial matters as they pertain to the children, including but not limited to child support issues, and any agreement or conflict between the parents with the children or within the children's spheres of awareness, or allowing the children to remain in the presence of anyone doing the same.

Attorney's Fees and Expenses

It was necessary for Petitioner to secure the services of John Nichols and Pamela K. Bergman, licensed attorneys, to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the children, judgment for attorneys' fees and expenses through trial and appeal should be granted against Respondent and in favor of Petitioner for the use and benefit of Petitioner's attorneys; or, in the alternative, Petitioner requests that reasonable attorney's fees and expenses through trial and appeal be taxed as costs and be ordered paid directly to Petitioner's attorneys, who may enforce the order for fees in the attorneys' own name.

Statement on Alternative Dispute Resolution

Petitioner has signed a statement on alternative dispute resolution, has previously been filed and was attached as Exhibit 1 to Petitioner's Original Petition.

Additional Causes of Action

Petitioner alleges additional causes of action against Respondent as follows:

A. Causes of Action for Assault

1. Cause of Action for Intentional, Knowing, or Reckless Bodily Injury
 - On or about February 20, 2001, in Gillespie County, Texas, Respondent intentionally and knowingly or recklessly caused bodily injury to Petitioner by slamming her arm in the front door of the marital residence and thereafter forcefully pushing her away from the same door in an attempt to hold Petitioner in the house against her will.

- On or about February 21, 2001, in Gillespie County, Texas, Respondent intentionally and knowingly or recklessly caused bodily injury to Petitioner by forcefully pushing her into a bathroom in the marital residence, hitting her body with the door and thereafter wedging his foot in the door to keep her from closing the door to get away from him.

2. Cause of Action for Threat of Imminent Bodily Injury

- On or about November 23, 2000, in Gillespie County, Texas, Respondent threatened to cause bodily injury to Petitioner by forcefully throwing a large boot directly at her while screaming, "I can't believe you are so fucking stupid."
- On or about February 20, 2001, in Gillespie County, Texas, Respondent intentionally and knowingly threatened Petitioner with bodily injury by holding her in the home against her will while screaming, "You will stay here and talk to me or else."
- On or about February 21, 2001, Respondent intentionally and knowingly threatened Petitioner with bodily injury by holding her in a room against her will forcing her to experience his temper tantrum and listen to his threats against her.

3. Cause of Action for Offensive or Provocative Physical Contact

- On or about February 20, 2001, in Gillespie County, Texas, Respondent intentionally or knowingly caused physical contact with Petitioner by forcefully pushing her and physically detaining her when Respondent knew or should have reasonably believed that Petitioner would regard such contact as offensive or provocative.
- On or about February 21, 2001, in Gillespie County, Texas, Respondent intentionally and knowingly cause physical contact with Petitioner by forcefully pushing her and physically detaining her when Respondent knew or should have reasonably believed that Petitioner would regard such contact as offensive or provocative.

B. *Cause of Action for Intentional Infliction of Emotional Distress*

In Gillespie County, Texas, in the presence of the parties' four daughters and in public, Respondent has intentionally or recklessly engaged in a pattern of extreme

and outrageous behavior that has caused Petitioner emotional distress and humiliation by repeatedly and continually:

1. Becoming enraged and screaming profanity at Petitioner;
2. Calling Petitioner vile, demeaning and degrading names;
3. Attacking Petitioner's credibility and cursing Petitioner;
4. Demeaning and ridiculing Petitioner's mother and grandmother telling the children they are "white trash;"
5. Criticizing and undermining Petitioner's parental authority;
6. Alienating and brainwashing the children with cruel or untrue statements about Petitioner;
7. Taunting Petitioner that police or legal authorities will not stand in the way or protect her from his conduct.
8. Soliciting the active participation of his family members to alienate the children from Petitioner;
9. Threatening to take Petitioner's children, business, home and vehicle from her unless she remains married to him;
10. Holding Petitioner against her will forcing her to experience his ranting and threats;
11. Forcefully preventing Petitioner from meeting clients in a timely manner, thereby threatening her business and reputation.

C. *Actual Damages for Resulting Personal Injuries (on A & B above).*

As a direct and proximate result of Respondent's wrongful conduct alleged above, Petitioner has suffered certain damages including:

1. Reasonable and necessary medical expenses in the past;
2. Reasonable and necessary medical expenses that in reasonable probability will be incurred in the future;
3. Loss of earnings in the past;

4. Physical pain, suffering, and mental anguish in the past.

Petitioner additionally brings this suit for these damages, which exceed the minimum judicial limits of this Court.

D. *Exemplary Damages (on A & B above).*

The conduct committed by Respondent against Petitioner is the type of conduct evidencing actual malice on Respondent's part that allows the imposition of exemplary damages. Petitioner additionally brings this suit for these damages, which exceeds the minimal jurisdictional limits of this Court.

E. *Cause of Action Alleging Third-Party Corporation to Be Alter Ego of Respondent.*

Petitioner will show that the identity of the corporation and the individual Respondent are in substance one and the same. Co-Respondent corporation is only the alter ego of the individual Respondent, acting solely as a conduit for the performance of the individual Respondent's business through mismanagement of corporate finances and payment of personal expenses with corporate funds, personal use of company automobiles, domination of board of directors by family members, and failure to maintain corporate records or file corporate returns.

F. *Causes of Action For Fraud And Conspiracy.*

Respondent and Respondent's parent, Kenneth P. Biedermann, defrauded Petitioner by conspiring and concocting a story that B. L. & H., Inc. was gifted to Kenneth Kyle Biedermann by his father Kenneth P. Biedermann, partially in 1993 and partially in 1994. This "partial gifting," (it was stated) by Kenneth P. Biedermann, was to avoid gift taxes to Kenneth P. Biedermann since B. L. & H. Inc. had a fair market value that exceeded the \$20,000.00 annual gift tax exclusion (\$10,000.00 from [father] Kenneth P. Biedermann and \$10,000.00 from [mother] Kathryn E. Biedermann). Kenneth P. Biedermann testified to this under oath and that the tax returns would bear this out. What the tax returns for B. L. & H., Inc. actually show is that Kenneth P. Biedermann was 100% owner of B. L. & H., Inc. for 1993 and only a partial [various] per cent owner in 1994, during which time (May 5, 1994) the transfer of ownership to the community estate took place. This story was concocted by Kenneth Kyle Biedermann and Kenneth P. Biedermann to cover the fact that no gift tax returns were filed by Kenneth P. Biedermann in 1993 or 1994; on a supposed gift that, by Kenneth P. Biedermann's admissions under oath, exceeded the annual gift tax exclusion; and thereby triggered a tax to Kenneth P. Biedermann and Kathryn E. Biedermann. One may not affirmatively use their fraud as a basis for asserting or alleging ownership in property, separate or community.

This fraud vitiates all transactions connected to or with it. This fraud is actual, and individual to Avian Ann Biedermann for which she seeks a money judgment for mental anguish and attorneys' expenses against Kenneth Kyle Biedermann and Kenneth P. Biedermann, their conduct produced or proximately caused Avian Ann Biedermann.

Prayer

Petitioner prays that citation and notice issue as required by law and that the Court grant a divorce and all other relief requested in this petition.

Petitioner prays for judgment against Co-Respondent finding Co-Respondent corporation to be the alter ego of Respondent. Petitioner prays that on a finding of alter ego the Court divide the "corporate" assets as the Court deems just and right.

Petitioner prays for judgment against Respondent in a sum within the jurisdictional limits of this Court for her actual damages as alleged, for exemplary damages, for prejudgment and postjudgment interest as allowed by law, for costs of court, and for general relief.

Petitioner prays that the court disregard the corporate veil as to B.L. & H., Inc. d/b/a Biedermann's Ace Hardware and order this business sold or order its assets sold under a court appointed receivership.

Petitioner prays that, on final hearing, the Court enter a permanent injunction enjoining Respondent, in conformity with the allegations of this petition, from the acts set forth above.

Petitioner prays for a tort judgment with pre and post judgment interest against Respondent.

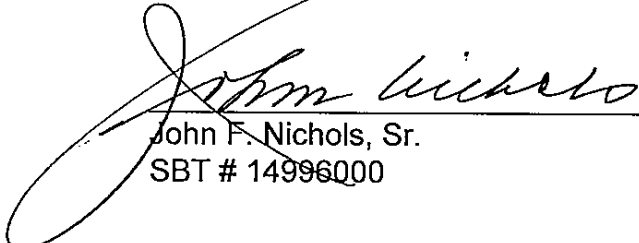
Petitioner prays for the appointment of a Receiver and that the Court declare the note referred to herein a nullity.

Petitioner prays for attorney's fees, expenses, and costs as requested above.

Petitioner prays for general relief.

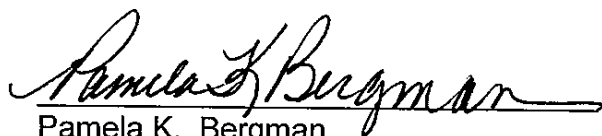
Respectfully submitted,

LAW OFFICE OF JOHN NICHOLS



John F. Nichols, Sr.

SBT # 14996000

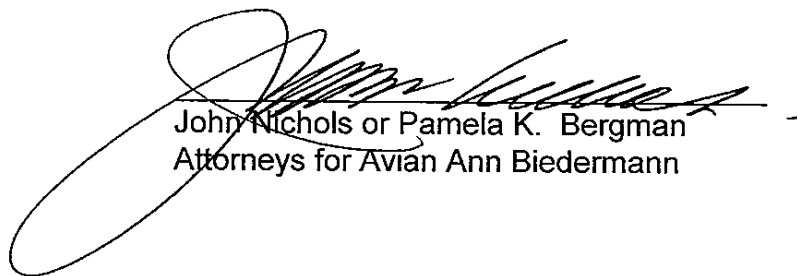


Pamela K. Bergman
SBT #00795804
1301 McKinney, Suite 3636
Houston, Texas 77010
713/654-0708
713/654-0706 FAX

Attorneys for Avian Ann Biedermann

Certificate of Service

I certify that a true copy of the above was served on each attorney or party in accordance with the Texas Rules of Civil Procedure on this the 20 day of November, 2001.



John Nichols or Pamela K. Bergman
Attorneys for Avian Ann Biedermann

CONFESSE COMILLA TEXAS
OFFICIAL OFFICE
SHERIFF AMARAS

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

Telephone: (713) 654-0708

Fax: (713) 654-0706

JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization:
Personal Injury - Civil Trial-Family Law -
National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 112

December 6, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

CMRRR 7000 1940 0003 4532 6098

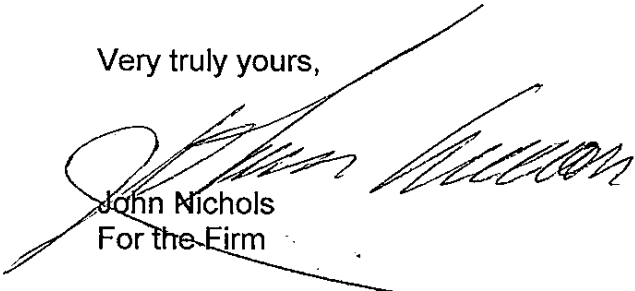
Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Please take the indicated action: **1. Notice of Misnomer**

- File among papers in the above cause.
- File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger.
- A filing fee is enclosed in the amount of \$_____.
- Present to Judge for signature and/or hearing date.
- Demand for jury.
- By copy hereof, those persons whose names appear below are being notified of this filing.

Very truly yours,



John Nichols
For the Firm

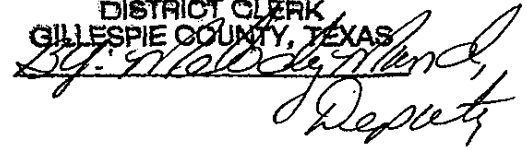
FILED
At 12:57 o'clock P.M

DEC 10 2001

JN:sf

GILLESPIE COUNTY, TEXAS
CLERK OF DISTRICT COURT
Enclosure

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS



Deputy

cc. w/encs.: Avian Ann Biedermann
 Scott Monroe
 Kurtis Rudkin

CMRRR 7001 1940 0003 4532 6104
CMRRR 7000 1940 0003 4532 6111

10:00 CLOCK
FILED

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTERESTS OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT OF

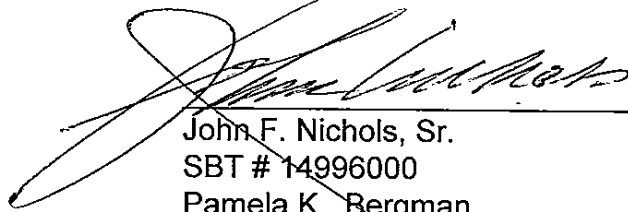
GILLESPIE COUNTY, T E X A S

216TH JUDICIAL DISTRICT

Notice of Misnomer

Notice is hereby given to the Court, that on November 26, 2001, Petitioner filed with this Court a document entitled, "Petitioner's Third Amended Petition for Divorce". Petitioner's document was improperly entitled and should be corrected to reflect the proper heading, which is "Petitioner's Second Amended Petition for Divorce".

LAW OFFICE OF JOHN NICHOLS



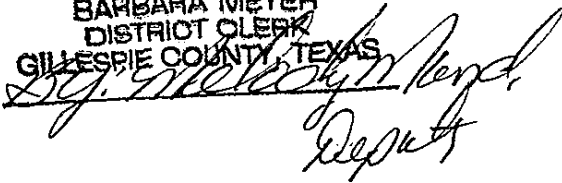
John F. Nichols, Sr.
SBT # 14996000
Pamela K. Bergman
SBT #00795804
1301 McKinney, Suite 3636
Houston, Texas 77010
713/654-0708
713/654-0706 FAX

Attorneys for Avian Ann Biedermann

FILED
At 6:58 o'clock P.M.

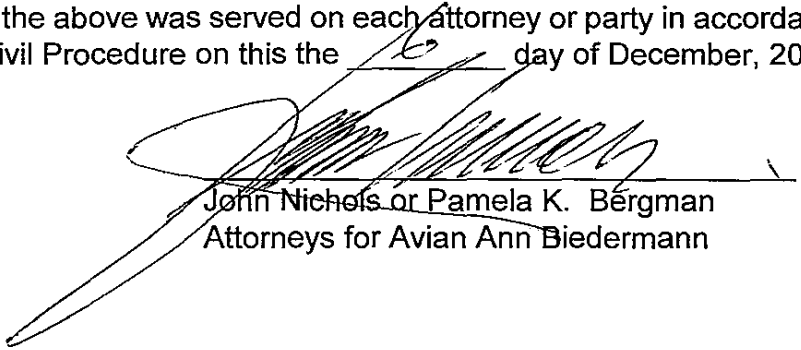
DEC 10 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS



Certificate of Service

I certify that a true copy of the above was served on each attorney or party in accordance with the Texas Rules of Civil Procedure on this the 16 day of December, 2001.



John Nichols or Pamela K. Bergman
Attorneys for Avian Ann Biedermann

RECEIVED
CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY L. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

December 4, 2001

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main, Room 204
Fredericksburg, TX 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Barbara:

Please file the enclosed Documents in the above-referenced court file and send copies of the Order Setting Hearing to all appropriate parties.

Very truly yours,

A handwritten signature in black ink that reads "Stephen B. Ables".

Stephen B. Ables
216th District Judge

SBA:mfb

Enclosures

FILED
At 1:01 O'clock P.M.

DEC 10 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

A handwritten signature in black ink that reads "Barbara Meyer" with a flourish underneath.

POLLARD & MONROE
ATTORNEYS AT LAW

951 MAIN STREET
KERRVILLE, TEXAS 78028

L. W. POLLARD (1902-1981)
THOMAS W. POLLARD
SCOTT F. MONROE

TELEPHONE: (830) 896-7500
TELECOPIER: (830) 257-7079
E-MAIL: tpollard@ktc.com
E-MAIL: smonroe@ktc.com

November 30, 2001

Ms. Becky Henderson
Court Coordinator
Kerr County Courthouse
700 Main Street
Kerrville, Texas 78028

RE: Cause No. 9284; In the Matter of the
Marriage of Avian Ann Biedermann and Kenneth
Kyle Biedermann and In the Interest of Kyla Rae
Biedermann, Emily Laine Biedermann, Loren
Noel Biedermann and Dana True Biedermann,
Minor Children; In the District Court of Gillespie
County, Texas, 216th Judicial District

Dear Becky:

This letter is to confirm our conversation that the attorneys have agreed to reset this case from its present setting of December 10, 2001, until January 28, 2002, subject to the jury. Please remove the case from the docket on December 10th. Also, I am enclosing a new order setting this matter for trial. Please present this order to Judge Ables at your convenience.

Thank you very much for your help in this matter. Please notify me if there is anything further that I need to do.

Very truly yours,



Scott F. Monroe

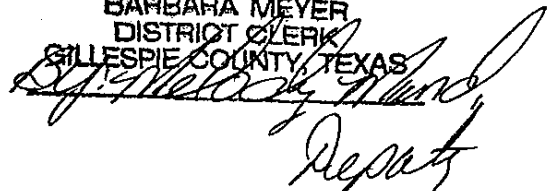
enc.

SFM/scp
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

FILED
At 1:02 O'clock P.M.

DEC 10 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS



0:00:00
FILED

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

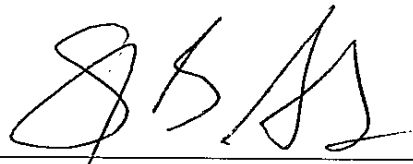
* IN THE DISTRICT COURT
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*
* OF GILLESPIE COUNTY, TEXAS
*
*
*
*
* 216TH JUDICIAL DISTRICT

ORDER SETTING HEARING

The above cause is hereby reset for trial on the ^{29th} ~~28th~~ day of January, 2002, at 9:00 A.

M. in the District Court of Borden County, Texas, (subject to the jury).

SIGNED this 3 day of December, 2001. The approximate length of time for this trial is 2-3 days.



JUDGE PRESIDING

cc:

John Nichols ✓ 12-12-01
Scott F. Monroe ✓ 12-12-01 ✓ 1-8-02
Kurt S. Rudkin ✓ 12-12-01

FILED
At 1:03 O'clock P.M.

DEC 10 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Handwritten signature]
Deputy

VI 0:00 O'clock VI
FILED

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

Telephone: (713) 654-0708

Fax: (713) 654-0706

JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization:
Personal Injury - Civil Trial-Family Law -
National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 112

December 13, 2001

Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children*, In the 216th Judicial District of Gillespie County, Texas

Dear Mrs. Meyer:

Please take the indicated action: 1. Certificate of Written Discovery

- File among papers in the above cause.
- File stamp the enclosed copy of same and return to the undersigned in the self-addressed, stamped envelope and/or via our messenger. ✓ 12-17-01 *lem*
- A filing fee is enclosed in the amount of \$_____.
- Present to Judge for signature and/or hearing date.
- Demand for jury.
- By copy hereof, those persons whose names appear below are being notified of this filing.

Very truly yours,

John Nichols
John Nichols
For the Firm
JN:sf

FILED
At 12:40 O'clock P M

DEC 17 2001
Barbara Meyer
BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Enclosure

cc. Avian Ann Biedermann
Scott Monroe
Kurtis Rudkin
GMA Court Reporting

Via Fax: 830/257-7079
Via Fax: 830/249-6315
Via Fax: 830-895-2477

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
AVIAN ANN BIEDERMANN	§	
AND	§	
KENNETH KYLE BIEDERMANN	§	
	§	GILLESPIE COUNTY, T E X A S
AND IN THE INTERESTS OF	§	
KYLA RAE BIEDERMANN,	§	
EMILY LAINE BIEDERMANN,	§	
LOREN NOEL BIEDERMANN AND	§	
DANA TRUE BIEDERMANN, MINOR	§	
CHILDREN	§	216TH JUDICIAL DISTRICT

Certificate of Written Discovery

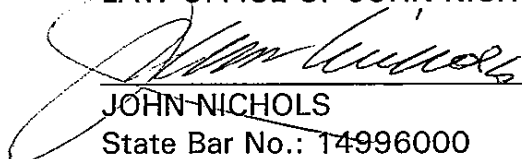
TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Avian Ann Biedermann, hereinafter referred to as Petitioner, and files her certificate of written discovery, and hereby certifies that the following discovery items were forwarded to the Respondent, Kenneth Kyle Biedermann, by and through his attorney of record, Scott F. Monroe, Pollard & Monroe, 951 Main Street, Kerrville, Texas, 78028.

1. Notice of Intent to Take Oral Deposition of Kenneth Kyle Biedermann.

Respectfully Submitted,

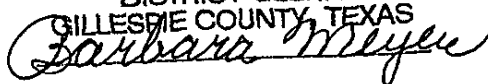
LAW OFFICE OF JOHN NICHOLS



JOHN NICHOLS
 State Bar No.: 14996000
 1301 McKinney, Suite 3636
 Houston, Texas 77010
 713/654-0708
 713/654-0706 Fax
 Attorneys for Avian Ann Biedermann

FILED
 At 12:41 O'clock PM

DEC 17 2001

BARBARA MEYER
 DISTRICT CLERK
 GILLESPIE COUNTY, TEXAS


CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on December 13, 2001.



JOHN NICHOLS
Attorney for Avian Ann Biedermann

STATE OF TEXAS
COUNTY OF DALLAS
CLERK OF DISTRICT COURT

FILED
DEC 13 2001



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

December 28, 2001

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main, Room 204
Fredericksburg, TX 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Barbara:

Enclosed is a Temporary Order Regarding the Christmas Visitation in the above-referenced matter. Please file the original and send copies of the Order to all appropriate parties. ✓ 1-8-02

m.m.

Very truly yours,

A handwritten signature in black ink, appearing to read "SBA", written over the typed name.

Stephen B. Ables
216th District Judge

SBA:mfb

Enclosures

FILED
At 12:50 O'clock P M

JAN 7 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer

FILED
At 12:57 O'clock P M

JAN 7 2002

No. 9284

BARBARA MEYER
DISTRICT CLERK

GILLESPIE COUNTY, TEXAS
Barbara Meyer

IN THE MATTER OF
THE MARRIAGE OF

*
*
*
*
*
*
*
*
*
*
*
*

IN THE DISTRICT COURT
OF GILLESPIE COUNTY, TEXAS

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

216TH JUDICIAL DISTRICT

TEMPORARY ORDER REGARDING CHRISTMAS VISITATION

On the 20th day of December, 2001, came on to be considered Respondent's Motion for Further Temporary Orders and the Court, after having considered said motion is of the opinion that Respondent should have the following visitation schedule with his children during the Christmas holidays of this year.

It is ORDERED by the Court that Respondent shall have possession of his children commencing at 5:00 o'clock P. M. on December 21, 2001, and ending at 8:00 P. M. on December 24th, 2001. Additionally, it is ORDERED that Respondent have further visitation with his children commencing at 6:00 P. M. on January 1, 2002, and ending at 6:00 P. M. on January 6, 2002. Petitioner shall have possession of the children at all other times during the holiday season of this year.

SIGNED this 29 day of December, 2001.



JUDGE PRESIDING

COPIES MAILED TO:

cc:

- ✓ Scott F. Monroe (830) 257-7079 1-8-02
- ✓ John Nichols (713) 654-0706 1-8-02
- Shannon Russell (713) 654-0706
- ✓ Atty. Rudkin 1-8-02

INTELLIGENCE DIVISION
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C.



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

January 8, 2002

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main, Room 204
Fredericksburg, TX 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Barbara:

Please file the enclosed Letter in the above-referenced court file. Copies of the Letter have been sent to John Nichols, Kurt Rudkin and Scott Monroe.

Very truly yours,

A handwritten signature in black ink, appearing to read "SBA", written over the typed name.

Stephen B. Ables
216th District Judge

SBA:mfb

Enclosures

FILED
At 1:32 O'clock P.M.

JAN 14 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

A handwritten signature in black ink, appearing to read "Barbara Meyer", written over the typed name.



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

January 8, 2002

Mr. John Nichols
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

Mr. Kurt Rudkin
Attorney at Law
1414 E. Blanco, Suite 3-B
Boerne, Texas 78006

Mr. Scott Monroe
Attorney at Law
951 Main Street
Kerrville, Texas 78028

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Counsel:

The above-referenced matter which is presently set for non-jury trial on January 29, 2002 at 9:00 a.m. in Bandera has been moved to Fredericksburg, Gillespie County, Texas, on the same day and time.

Please give me a call if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Becky Henderson".

Becky Henderson
Court Administrator
198th & 216th District Courts

FILED
At 1:30 clock P.M.

JAN 14 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

A handwritten signature in cursive script that reads "Barbara Meyer" with the word "Deputy" written below it.

HP LASERJET 3150
PRINTER/FAX/COPIER/SCANNER

HOC BROADCAST REPORT FOR
DISTRICT JUDGE
1 830 792 2294
JAN-8-02 11:20AM

JOB	PHONE NUMBER/ADDRESS	START TIME	PAGES	MODE	STATUS
980	9, ,17136540706,617....	1/ 8 11:18AM.....	1/ 1	BC	COMPLETED <i>J. Nichols</i>
980	9, ,18302496315,617....	1/ 8 11:19AM.....	1/ 1	BC	COMPLETED <i>K. Rudan</i>
980	92577079.....	1/ 8 11:20AM.....	1/ 1	BC	COMPLETED <i>S. Madroe</i>

WALLACE T. FERGUSON
ANDREW J. HIX

Ferguson & Hix
ATTORNEYS AT LAW
P.O. BOX 1106
BOERNE, TEXAS 78006
TELEPHONE (830) 249-9595

TELECOPIER
(830) 249-2999

January 21, 2002

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
NO. 7000 1670 0007 6658 5116

Ms. Barbara Meyer
Gillespie County District Clerk
101 W. Main Street, #204
Fredericksburg TX 78624-3700

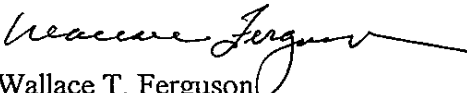
RE: No. 9284
In the Matter of the Marriage of Avian Ann Biedermann and Kenneth Kyle Biedermann and In the Interest of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann, Minor Children

Dear Ms. Meyer:

Mediation in the above confirmed matter was successful as to the Parent/Child issues only. Please file the original Mediated Settlement Agreement and return a file-stamped copy in the envelope provided. ✓ 1-25-02

Thank you for your assistance in this matter.

Respectfully,


Wallace T. Ferguson
Attorney at Law

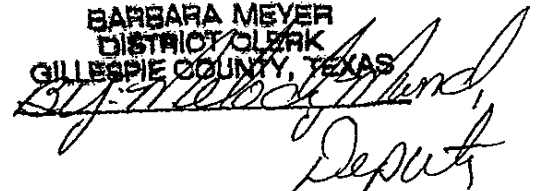
WTF:jes
Enclosures

cc: Mr. Scott Monroe
Mr. John F. Nichols, Sr.

FILED
At 11:40 O'clock A.M.

JAN 24 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS


Deputy

WTF:jes
0.0000X
GIF 2002

In the Matter of
The Marriage of
Avian Bidermann
and
Kenneth Bidermann
and in the Interest of
Kyle, Emily, Lauren,
and Dana Bidermann
Children

In District Court

Gillespie County, Texas

216th Judicial District

Mediated Settlement Agreement

The parties herewith agree to compromise and settle the matters to their presently pending suit set forth herein. The parties stipulate that the agreements set forth hereafter are in the best interest of their children.

AB
AB

THIS AGREEMENT IS NOT SUBJECT TO
REVOCATION

A PARTY TO THIS AGREEMENT IS ENTITLED
TO JUDGEMENT ON THIS MEDIATION SETTLE
MENT AGREEMENT

AB
AB

KB
KB

FILED
At 11:40'clock A.M.

JAN 24 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

[Signature]
Deputy

Children

1. Parties will be named Joint Managing Conservators. Petitioner will have the rights of a sole managing conservator. Respondent will have the rights of a sole possessory conservator.

2. Respondent will have possession and access pursuant to the Standard Possession Order and

His weekend possession will begin when school is dismissed on Friday and end when school resumes on Monday

His "midweek" possession will begin when school is dismissed on Thursday (instead of Wednesday) and end when school resumes on Friday.

3. Respondent will pay Petitioner child support of \$1200.00 per month ^{in two equal installments of \$600.00 per month} beginning on the 15th day of the month following the entry of a final decree of divorce.

Respondent will pay and maintain health insurance coverage for the children and the parties will split equally the costs of any uncovered medical costs.

4. The children's residence will be only in Gillespie or Coalinga counties unless the parties agree otherwise or petitioner returns to court and obtains permission to

Agreed & Approved of
[Signature]

[Signature]

[Signature]

[Signature]

Signed ON JANUARY 18, 2002 .

David J. Friedman
PETITIONER

[Signature]
PETITIONER'S ATTORNEY

[Signature]
RESPONDENT

[Signature]
Respondent's Attorney

[Signature]
Attorney Ad Litem
[Signature]
mediator

FILED
DISTRICT CLERK
GARLAND COUNTY, TEXAS

JAN 18 2002

FILED
11 01 00 AM
11 01 00 AM

LAW OFFICES of JOHN NICHOLS

Chevron Tower

1301 MCKINNEY STREET SUITE 3636

HOUSTON TEXAS 77010

Telephone: (713) 654-0708

Fax: (713) 654-0706

JOHN NICHOLS,

Board Certified-Texas Board of Legal Specialization:
Personal Injury - Civil Trial-Family Law -
National Board of Trial Advocacy-Civil Trial

Writer's Direct Dial:
(713) 654-0708 Ext. 112

January 21, 2002

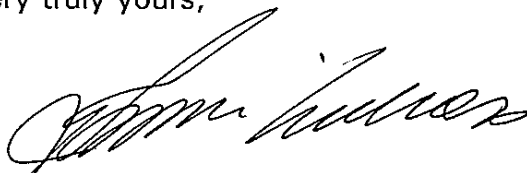
Mrs. Barbara Meyer
District Clerk
Gillespie County Courthouse
101 W. Main St., Room 204
Fredericksburg, TX 78624-3700

Re: Cause No. 9284; *In The Matter of the Marriage of Avian Ann Biedermann, and in the Interests of Kyle Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children, In the 216th Judicial District of Gillespie County, Texas*

Dear Mrs. Meyer:

Enclosed herein please find the required Information on Suit Affecting the Parent-Child Relationship form (BVS form) in the above referenced cause to be placed in the court's file. Please file stamp the enclosed copy of same and return to this office in the self-addressed stamped envelope provided. By copy of this letter and the enclosure herein opposing counsel is being notified of our submitting this document to you. ✓ 1-25-02

Very truly yours,



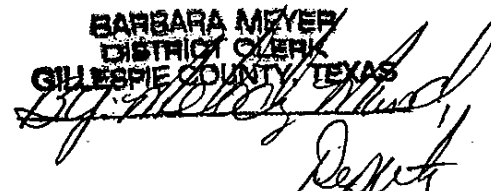
John Nichols
For the Firm

JN:dh

FILED
At 11:55 O'clock A.M

JAN 24 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS



Enclosure
GILLESPIE COUNTY, TEXAS
DISTRICT CLERK
Cause No. 9284
Avian Ann Biedermann
Scott Monroe
Kurtis Rudkin

Via Fax: 830/257-7079

Via Fax: 830/249-6315

VI O,CLOCK M
FILED



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

January 23, 2002

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main, Room 204
Fredericksburg, TX 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Barbara:

Please file the enclosed Letter in the above-referenced court file.

Very truly yours,

A handwritten signature in cursive script that reads "Stephen B. Ables".

Stephen B. Ables
216th District Judge

SBA:mfb

Enclosures

FILED
At 12:30'clock P.M.

JAN 28 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

A handwritten signature in cursive script that reads "Barbara Meyer".

In the Matter of
The Marriage of
Ariane Bidermann
and
Kenneth Bidermann
and in the Interest of
Kyle, Emily, Lauren,
and Dana Bidermann
Children

In District Court

Gillespie County, Texas

216th Judicial District

Mediated Settlement Agreement

The parties herewith agree to compromise and settle the matters to their presently pending suit set forth herein. The parties stipulate that the agreements set forth hereafter are in the best interest of their children.

AB
AB

THIS AGREEMENT IS NOT SUBJECT TO
REVOCATION

A PARTY TO THIS AGREEMENT IS ENTITLED
TO JUDGEMENT ON THIS MEDIATION SETTL
MENT AGREEMENT

AB
AB

KB
KB

FILED
At 12:04 o'clock P.M.

JAN 28 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

[Handwritten Signature]
Deputy

Signed ON JANUARY 18, 2002 .

Joseph J. Fishman
PETITIONER

John J. ...
PETITIONER'S ATTORNEY

W. ...
RESPONDENT

Scott ...
Respondent's Attorney

Wendy ...
Attorney Ad Litem
Mediator

CLERK OF DISTRICT COURT
DISTRICT OF COLUMBIA

03 10:00 AM
FILED

COPY

WALLACE T. FERGUSON
ANDREW J. HIX

Ferguson & Hix
ATTORNEYS AT LAW
P.O. BOX 1106
BOERNE, TEXAS 78006
TELEPHONE (830) 249-9595

TELECOPIER
(830) 249-2999

January 21, 2002

CERTIFIED MAIL—RETURN RECEIPT REQUESTED
NO. 7000 1670 0007 6658 5116

Ms. Barbara Meyer
Gillespie County District Clerk
101 W. Main Street, #204
Fredericksburg TX 78624-3700

RE: No. 9284

In the Matter of the Marriage of Avian Ann Biedermann and Kenneth Kyle Biedermann and In the Interest of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann, Minor Children

Dear Ms. Meyer:

Mediation in the above confirmed matter was **successful** as to the Parent/Child issues only. Please file the original Mediated Settlement Agreement and return a file-stamped copy in the envelope provided.

Thank you for your assistance in this matter.

Respectfully,



Wallace T. Ferguson
Attorney at Law

WTF:jes
Enclosures

xc: Mr. Scott Monroe
Mr. John F. Nichols, Sr.

FILED
At _____ O'clock _____ M

JAN 28 2002

**BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS**

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
AVIAN ANNE BIEDERMANN	§	
AND	§	
KENNETH KYLE BIEDERMANN	§	
	§	GILLESPIE COUNTY, T E X A S
AND IN THE INTERESTS OF	§	
KYLA RAE BIEDERMANN,	§	
EMILY LAINE BIEDERMANN,	§	
LOREN NOEL BIEDERMANN AND	§	
DANA TRUE BIEDERMANN, MINOR	§	
CHILDREN	§	216TH JUDICIAL DISTRICT

FILED

At 9:26 O'clock 

Agreed Final Decree of Divorce

On the undersigned date the Court heard this case.

JAN 29 2002

Appearances

**BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS**

Petitioner, Avian Anne Biedermann, through attorney of record, John E. Nichols, Sr. announced a settlement as evidenced by their signatures below and agrees to the rendition, signature and entry of this Agreed Final Decree of Divorce by a prove up of the divorce by Kyle Biedermann. *By Jan. Nichols, Sr. Chief Deputy*

Respondent, Kenneth Kyle Biedermann, appeared in person and through attorney of record, Scott Monroe, and announced settlement as evidenced by their signatures below.

Kurtis Rudkin, appointed attorney ad litem of the children the subject of this suit, agrees to the terms of this settlement and Agree Final Decree of Divorce relating to all parent-child matters, and waives his appearance as evidenced by his signature below.

Record

The record of testimony was duly reported by the official court reporter for the 216th Judicial District Court.

Jurisdiction and Domicile

*Vol. A-31
Page 553-591*

The Court finds that the pleadings of Petitioner are in due form and contain all the allegations, information, and prerequisites required by law. The Court, after receiving evidence, finds that it has jurisdiction of this case and of all the parties and that at least sixty days have elapsed since the date the suit was filed. The Court finds that, at the time this suit was filed, Petitioner had been a domiciliary of Texas for the preceding six-month period and a resident of the county in which this suit was filed for the preceding ninety-day period. All persons entitled to citation were properly cited.

Jury

A jury was waived, and all questions of fact and of law were submitted to the Court.

Agreement of Parties

The Court finds that the parties have entered into a written agreement as contained in this decree by virtue of having approved this decree as to both form and substance. To the extent permitted by law, the parties stipulate the agreement is enforceable as a contract on all matters except parent-child matters. The Court approves the agreement of the parties as contained in this Final Decree of Divorce.

Divorce

IT IS ORDERED AND DECREED that Avian Anne Biedermann, Petitioner, and Kenneth Kyle Biedermann, Respondent, are divorced and the marriage between them is dissolved.

Children of the Marriage

The Court finds that Petitioner and Respondent are the parents of the following children:

Name: Kyla Rae Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: January 26, 1992
Present address: 110 W. Hackberry St., Fredericksburg, Texas
Home state: Texas

Name: Emily Laine Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas

Birth date: July 15, 1993
Present address: 110 W. Hackberry St., Fredericksburg, Texas
Home state: Texas

Name: Loren Noel Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: December 20, 1994
Present address: 110 W. Hackberry St., Fredericksburg, Texas
Home state: Texas

Name: Dana True Biedermann
Sex: Female
Birthplace: Fredericksburg, Texas
Birth date: March 22, 1996
Present address: 110 W. Hackberry St., Fredericksburg, Texas
Home state: Texas

The Court finds no other children of the marriage are expected.

Conservatorship

The Court, having considered the circumstances of the parents and of the children, finds that the following orders are in the best interest of the children.

IT IS ORDERED that Avian Anne Biedermann and Kenneth Kyle Biedermann are appointed joint managing conservators of the following children: Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann.

IT IS ORDERED that, at all times, Avian Anne Biedermann and Kenneth Kyle Biedermann, as a joint managing conservators, shall each have the following rights:

1. the right to receive information from the other parent concerning the health, education, and welfare of the children;
2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education and welfare of the children;
3. the right of access to medical, dental, psychological, and educational records of the children;

4. the right to consult with a physician, dentist, or psychologist of the children;
5. the right to consult with school officials concerning the children's welfare and educational status, including school activities;
6. the right to attend school activities;
7. the right to be designated on the children's records as a person to be notified in case of an emergency;
8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children; and
9. the right to manage the estate of the children to the extent the estates have been created by the parent or the parent's family.

IT IS ORDERED that, at all times, Avian Anne Biedermann and Kenneth Kyle Biedermann shall each have the following duties:

1. the duty to inform the other parent in a timely manner of significant information concerning the health, education, and welfare of the children; and
2. the duty to inform the other parent if the parent resides with for at least thirty days, marries, or intends to marry a person who the parent knows is registered as a sex offender under Chapter 62 of the Code of Criminal Procedure (as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997) or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that this information shall be tendered in the form of a notice made as soon as practicable, but not later than the fortieth day after the date the parent begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. **WARNING: A PERSON COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE PERSON FAILS TO PROVIDE THIS NOTICE.**

IT IS ORDERED that, during their respective periods of possession, Avian Anne Biedermann and Kenneth Kyle Biedermann, shall each have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the children;

2. the duty to support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
3. the right to consent for the children to medical and dental care not involving an invasive procedure;
4. the right to consent for the children to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the children; and
5. the right to direct the moral and religious training of the children.

IT IS ORDERED that Avian Anne Biedermann shall have the following exclusive rights and duty:

1. the right to establish the primary residence of the children within Gillespie County, Texas or any county contiguous to Gillespie County, Texas;
2. the right to consent to medical, dental, and surgical treatment involving invasive procedures and to consent to psychiatric and psychological treatment of the children;
3. the right to receive and give receipt for periodic payments for the support of the children and to hold or disburse these funds for the benefit of the children;
4. the right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children;
5. the right to consent to marriage and to enlistment in the armed forces of the United States;
6. the right to make decisions concerning the children's education;
7. the right to the services and earnings of the children;
8. except when a guardian of the children's estates or a guardian or attorney ad litem has been appointed for the children the right to act as an agent of the children in relation to the children's estates if the children's action is required by a state, the United States, or a foreign government; and
9. the duty to manage the estates of the children to the extent the estates have been created by community property or the joint property of the parents.

The Court finds that, in accordance with section 153.001 of the Texas Family Code, it is the public policy of Texas to assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child, to provide a safe, stable, and nonviolent environment for the child, and to encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage. IT IS ORDERED that the primary residence of the children shall be restricted to Gillespie County, Texas and any county contiguous to Gillespie County, Texas, and the parties shall not remove the children from Gillespie County, Texas and contiguous counties for the purpose of changing the primary residence of the children until modified by further order of the court of continuing jurisdiction or by written agreement signed by the parties and filed with the court. IT IS FURTHER ORDERED that Avian Anne Biedermann shall have the exclusive right to establish the children's primary residence within Gillespie County, Texas or any county contiguous to Gillespie County, Texas. IT IS ORDERED that this geographical restriction on the residence of the children shall be lifted if, at the time Avian Anne Biedermann wishes to remove the children from Gillespie County, Texas and any county contiguous to Gillespie County, Texas for the purpose of changing the primary residence of the children, Kenneth Kyle Biedermann does not reside in Gillespie County, Texas and any county contiguous to Gillespie County, Texas.

Possession Order

The Court finds that the following provisions of this Possession Order are intended to and do comply with the requirements of Texas Family Code sections 153.311 through 153.317. IT IS ORDERED that the Joint Managing Conservators shall comply with all terms and conditions of this Possession Order. IT IS ORDERED that this Possession Order is effective immediately and applies to all periods of possession occurring on and after the signing of this Possession Order. IT IS, THEREFORE, ORDERED:

(a) Definitions

1. In this Possession Order "school" means the primary or secondary school in which the child is enrolled or, if the child is not enrolled in a primary or secondary school, the public school district in which the child primarily resides.
2. In this Possession Order "child" includes each child, whether one or more, who is a subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

(b) Mutual Agreement or Specified Terms for Possession

IT IS ORDERED that the conservators shall have possession of the child at times mutually agreed to in advance by the parties, and, in the absence of mutual agreement, it is ORDERED that the conservators shall have possession of the child under the specified terms set out in this Standard Possession Order.

(c) Parents Who Reside 100 Miles or Less Apart

Except as otherwise explicitly provided in this Standard Possession Order, when Kenneth Kyle Biedermann resides 100 miles or less from the primary residence of the child, Kenneth Kyle Biedermann shall have the right to possession of the child as follows:

1. Weekends—On weekends, beginning at the time the child's school is regularly dismissed on the first, third, and fifth Friday of each month and ending at the time the child's school resumes after the weekend.
2. Weekend Possession Extended by a Holiday—Except as otherwise explicitly provided in this Standard Possession Order, if a weekend period of possession by Kenneth Kyle Biedermann begins on a Friday that is a school holiday during the regular school term or a federal, state, or local holiday during the summer months when school is not in session, or if the period ends on or is immediately followed by a Monday that is such a holiday, that weekend period of possession shall begin at the time the child's school is regularly dismissed on the Thursday immediately preceding the Friday holiday or school holiday or end on that Monday holiday or school holiday on that Monday holiday or at the time school resumes after that school holiday, as applicable.
3. Thursdays—On Thursday of each week during the regular school term, beginning at the time the child's school is regularly dismissed and ending at the time the child's school resumes on Friday.
4. Christmas Holidays in Even-Numbered Years—In even-numbered years, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 26.
5. Christmas Holidays in Odd-Numbered Years—In odd-numbered years, beginning at noon on December 26 and ending at the time the child's school resumes after that Christmas school vacation.
6. Thanksgiving in Odd-Numbered Years—In odd-numbered years, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the Thanksgiving holiday and ending at the time the child's school

resumes after that Thanksgiving holiday.

7. Spring Break in Even-Numbered Years—In even-numbered years, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the school's spring vacation and ending at the time school resumes after that vacation.

8. Extended Summer Possession by Kenneth Kyle Biedermann—

With Written Notice by April 1—If Kenneth Kyle Biedermann gives Avian Anne Biedermann written notice by April 1 of a year specifying an extended period or periods of summer possession for that year, Kenneth Kyle Biedermann shall have possession of the child for thirty days beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation in that year, to be exercised in no more than two separate periods of at least seven consecutive days each, as specified in the written notice. These periods of possession shall begin and end at 6:00 P.M.

Without Written Notice by April 1—If Kenneth Kyle Biedermann does not give Avian Anne Biedermann written notice by April 1 of a year specifying an extended period or periods of summer possession for that year, Kenneth Kyle Biedermann shall have possession of the child for thirty consecutive days in that year beginning at 6:00 P.M. on July 1 and ending at 6:00 P.M. on July 31.

9. Child's Birthday—If Kenneth Kyle Biedermann is not otherwise entitled under this Standard Possession Order to present possession of the child on the child's birthday, Kenneth Kyle Biedermann shall have possession of the child and the child's siblings beginning at 6:00 P.M. and ending at 8:00 P.M. on that day, provided that Kenneth Kyle Biedermann picks up the child from Avian Anne Biedermann's residence and returns the child to that same place.

10. Father's Day Weekend—Each year, beginning at 6:00 P.M. on the Friday preceding Father's Day and ending at 6:00 P.M. on Father's Day, provided that if he is not otherwise entitled under this Standard Possession Order to present possession of the child, he shall pick up the child from Avian Anne Biedermann's residence and return the child to that same place.

Notwithstanding the weekend and Wednesday periods of possession ORDERED for Kenneth Kyle Biedermann, it is explicitly ORDERED that Avian Anne Biedermann shall have a superior right of possession of the child as follows:

1. Christmas Holidays in Odd-Numbered Years—In odd-numbered years, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 26.
2. Christmas Holidays in Even-Numbered Years—In even-numbered years, beginning at noon on December 26 and ending at the time the child's school resumes after that Christmas school vacation.
3. Thanksgiving in Even-Numbered Years—In even-numbered years, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the Thanksgiving holiday and ending at the time the child's school resumes after that Thanksgiving holiday.
4. Spring Break in Odd-Numbered Years—In odd-numbered years, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the school's spring vacation and ending at before school resumes after that vacation.
5. Summer Weekend Possession by Avian Anne Biedermann—If Avian Anne Biedermann gives Kenneth Kyle Biedermann written notice by April 15 of a year, Avian Anne Biedermann shall have possession of the child on any one weekend beginning at 6:00 P.M. on Friday and ending at 6:00 P.M. on the following Sunday during any one period of the extended summer possession by Kenneth Kyle Biedermann in that year, provided that Avian Anne Biedermann picks up the child from Kenneth Kyle Biedermann and returns the child to that same place.
6. Extended Summer Possession by Avian Anne Biedermann—If Avian Anne Biedermann gives Kenneth Kyle Biedermann written notice by April 15 of a year or gives Kenneth Kyle Biedermann fourteen days' written notice on or after April 16 of a year, Avian Anne Biedermann may designate one weekend beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation, during which an otherwise scheduled weekend period of possession by Kenneth Kyle Biedermann shall not take place in that year, provided that the weekend so designated does not interfere with Kenneth Kyle Biedermann's period or periods of extended summer possession or with Father's Day Weekend.
7. Child's Birthday—If Avian Anne Biedermann is not otherwise entitled under this Standard Possession Order to present possession of the child on the child's birthday, Avian Anne Biedermann shall have possession of the child and the child's siblings beginning at 6:00 P.M. and ending at 8:00 P.M. on that day, provided that Avian Anne Biedermann picks up the child from Kenneth Kyle Biedermann's residence and returns

the child to that same place.

8. Mother's Day Weekend—Each year, beginning at 6:00 P.M. on the Friday preceding Mother's Day and ending at 6:00 P.M. on Mother's Day, provided that if Avian Anne Biedermann is not otherwise entitled under this Standard Possession Order to present possession of the child, she shall pick up the child from Kenneth Kyle Biedermann's residence and return the child to that same place.

Avian Anne Biedermann shall have the right of possession of the child at all other times not specifically designated in this Standard Possession Order for Kenneth Kyle Biedermann.

(d) Parents Who Reside More Than 100 Miles Apart

Except as otherwise explicitly provided in this Standard Possession Order, when Kenneth Kyle Biedermann resides more than 100 miles from the residence of the child, Kenneth Kyle Biedermann shall have the right to possession of the child as follows:

1. Weekends—Unless Kenneth Kyle Biedermann elects the alternative period of weekend possession described in the next paragraph, Kenneth Kyle Biedermann shall have the right to possession of the child on weekends, beginning at the time the child's school is regularly dismissed, on the first, third, and fifth Friday of each month and ending at the time the child's school resumes after the weekend. Except as otherwise explicitly provided in this Standard Possession Order, if such a weekend period of possession by Kenneth Kyle Biedermann begins on a Friday that is a school holiday during the regular school term or a federal, state, or local holiday during the summer months when school is not in session, or if the period ends on or is immediately followed by a Monday that is such a holiday, that weekend period of possession shall begin at the time the child's school is regularly dismissed on the Thursday immediately preceding the Friday holiday or school holiday or end at the time school resumes after that school holiday, as applicable.

Alternate Weekend Possession—In lieu of the weekend possession described in the foregoing paragraph, Kenneth Kyle Biedermann shall have the right to possession of the child not more than one weekend per month of Kenneth Kyle Biedermann's choice beginning at the time the child's school is regularly dismissed on the day school recesses for the weekend and ending at the time the child's school resumes after the weekend. Except as otherwise explicitly provided in this Standard Possession Order, if such a weekend period of possession by Kenneth Kyle Biedermann begins on a Friday that is a school holiday during the regular school term or a federal, state, or local holiday during the summer months when school is not in session, or if the period ends on or is immediately followed by a Monday that is such a holiday, that weekend

period of possession shall begin at the time the child's school is regularly on the Thursday immediately preceding the Friday holiday or school holiday or end at the time school resumes after that school holiday, as applicable. Kenneth Kyle Biedermann may elect an option for this alternative period of weekend possession by giving written notice to Avian Anne Biedermann within ninety days after the parties begin to reside more than 100 miles apart. If Kenneth Kyle Biedermann makes this election, Kenneth Kyle Biedermann shall give Avian Anne Biedermann fourteen days' written or telephonic notice preceding a designated weekend. The weekends chosen shall not conflict with the provisions regarding Christmas, Thanksgiving, the child's birthday, and Mother's Day Weekend below.

2. Christmas Holidays in Even-Numbered Years—In even-numbered years, beginning at the time the child's school is regularly on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 26.

3. Christmas Holidays in Odd-Numbered Years—In odd-numbered years, beginning at noon on December 26 and ending at the time the child's school resumes after that Christmas school vacation.

4. Thanksgiving in Odd-Numbered Years—In odd-numbered years, beginning at the time the child's school is regularly on the day the child is dismissed from school for the Thanksgiving holiday and ending at the time the child's school resumes after that Thanksgiving holiday.

5. Spring Break in All Years—Every year, beginning at the time the child's school is regularly dismissed on the day the child is dismissed from school for the school's spring vacation and ending at the time school resumes after that vacation.

6. Extended Summer Possession by Kenneth Kyle Biedermann—

With Written Notice by April 1— If Kenneth Kyle Biedermann gives Avian Anne Biedermann written notice by April 1 of a year specifying an extended period or periods of summer possession for that year, Kenneth Kyle Biedermann shall have possession of the child for forty-two days beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation in that year, to be exercised in no more than two separate periods of at least seven consecutive days each, as specified in the written notice. These periods of possession shall begin and end at 6:00 P.M.

Without Written Notice by April 1—If Kenneth Kyle Biedermann does not give Avian Anne Biedermann written notice by April 1 of a year specifying an extended period or periods of summer possession for that year, Kenneth Kyle Biedermann shall have

possession of the child for forty-two consecutive days beginning at 6:00 p.m. on June 15 and ending at 6:00 P.M. on July 27 of that year.

7. Child's Birthday—If Kenneth Kyle Biedermann is not otherwise entitled under this Standard Possession Order to present possession of the child on the child's birthday, Kenneth Kyle Biedermann shall have possession of the child and the child's siblings beginning at 6:00 P.M. and ending at 8:00 P.M. on that day, provided that Kenneth Kyle Biedermann picks up the child from Avian Anne Biedermann's residence and returns the child to that same place.

8. Father's Day Weekend—Each year, beginning at 6:00 P.M. on the Friday preceding Father's Day and ending at 6:00 P.M. on Father's Day, provided that if Kenneth Kyle Biedermann is not otherwise entitled under this Standard Possession Order to present possession of the child, he shall pick up the child from Avian Anne Biedermann's residence and return the child to that same place.

Notwithstanding the weekend periods of possession ORDERED for Kenneth Kyle Biedermann, it is explicitly ORDERED that Avian Anne Biedermann shall have a superior right of possession of the child as follows:

1. Christmas Holidays in Odd-Numbered Years—In odd-numbered years, beginning at the time the child's school is regularly on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 26.

2. Christmas Holidays in Even-Numbered Years—In even-numbered years, beginning at noon on December 26 and ending at the time the child's school resumes after that Christmas school vacation.

3. Thanksgiving in Even-Numbered Years—In even-numbered years, beginning the time the child's school is regularly dismissed on the day the child is dismissed from school for the Thanksgiving holiday and ending at the time the child's school resumes after that Thanksgiving holiday.

4. Summer Weekend Possession by Avian Anne Biedermann—If Avian Anne Biedermann gives Kenneth Kyle Biedermann written notice by April 15 of a year, Avian Anne Biedermann shall have possession of the child on any one weekend beginning at the time the child's school is regularly dismissed on the following Sunday during any one period of possession by Kenneth Kyle Biedermann during Kenneth Kyle Biedermann's extended summer possession in that year, provided that if a period of possession by Kenneth Kyle Biedermann in that year exceeds thirty days, Avian Anne Biedermann may have possession of the child under the terms of this provision on any two nonconsecutive weekends during that period and provided

that Avian Anne Biedermann picks up the child from Kenneth Kyle Biedermann and returns the child to that same place.

5. Extended Summer Possession by Avian Anne Biedermann— If Avian Anne Biedermann gives Kenneth Kyle Biedermann written notice by April 15 of a year, Avian Anne Biedermann may designate twenty-one days beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation in that year, to be exercised in no more than two separate periods of at least seven consecutive days each, during which Kenneth Kyle Biedermann shall not have possession of the child, provided that the period or periods so designated do not interfere with Kenneth Kyle Biedermann's period or periods of extended summer possession or with Father's Day Weekend.

6. Child's Birthday—If Avian Anne Biedermann is not otherwise entitled under this Standard Possession Order to present possession of the child on the child's birthday, Avian Anne Biedermann shall have possession of the child and the child's siblings beginning at 6:00 P.M. and ending at 8:00 P.M. on that day, provided that Avian Anne Biedermann picks up the child from Kenneth Kyle Biedermann's residence and returns the child to that same place.

7. Mother's Day Weekend—Each year, beginning at 6:00 P.M. on the Friday preceding Mother's Day and ending at 6:00 P.M. on Mother's Day, provided that if Avian Anne Biedermann is not otherwise entitled under this Standard Possession Order to present possession of the child, she shall pick up the child from Kenneth Kyle Biedermann's residence and return the child to that same place.

Avian Anne Biedermann shall have the right of possession of the child at all other times not specifically designated in this Standard Possession Order for Kenneth Kyle Biedermann.

(e) General Terms and Conditions

Except as otherwise explicitly provided in this Standard Possession Order, the terms and conditions of possession of the child that apply regardless of the distance between the residence of a parent and the child are as follows:

1. Surrender of Child by Avian Anne Biedermann—Avian Anne Biedermann is ORDERED to surrender the child to Kenneth Kyle Biedermann at the beginning of each period of Kenneth Kyle Biedermann's possession at the residence of Avian Anne Biedermann.

If a period of possession by Kenneth Kyle Biedermann begins at the time the child's school is regularly dismissed, Avian Anne Biedermann is ORDERED to surrender the child to Kenneth Kyle Biedermann at the beginning of each such period of possession at the school in which the child is enrolled. If the child is not in school, Kenneth Kyle Biedermann shall pick up the child at the residence of Avian Anne Biedermann at 110 W. Hackberry, Fredericksburg, Texas, and Avian Anne Biedermann is ORDERED to surrender the child to Kenneth Kyle Biedermann at the residence of Avian Anne Biedermann at 110 W. Hackberry, Fredericksburg, Texas under these circumstances.

2. Return of Child by Kenneth Kyle Biedermann—Kenneth Kyle Biedermann is ORDERED to return the child to the residence of Avian Anne Biedermann at the end of each period of possession. However, it is ORDERED that, if Avian Anne Biedermann and Kenneth Kyle Biedermann live in the same county at the time of rendition of this order, Kenneth Kyle Biedermann's county of residence remains the same after rendition of this order, and Avian Anne Biedermann's county of residence changes, effective on the date of the change of residence by Avian Anne Biedermann, Kenneth Kyle Biedermann shall surrender the child to Avian Anne Biedermann at the residence of Kenneth Kyle Biedermann at the end of each period of possession.

If a period of possession by Kenneth Kyle Biedermann ends at the time the child's school resumes, Kenneth Kyle Biedermann is ORDERED to surrender the child to Avian Anne Biedermann at the end of each period of possession at the school in which the child is enrolled or, if the child is not in school, at the residence of Avian Anne Biedermann at 110 Hackberry, Fredericksburg, Texas.

3. Surrender of Child by Kenneth Kyle Biedermann—Kenneth Kyle Biedermann is ORDERED to surrender the child to Avian Anne Biedermann, if the child is in Kenneth Kyle Biedermann's possession or subject to Kenneth Kyle Biedermann's control, at the beginning of each period of Avian Anne Biedermann's exclusive periods of possession, at the place designated in this Standard Possession Order.

4. Return of Child by Avian Anne Biedermann—Avian Anne Biedermann is ORDERED to return the child to Kenneth Kyle Biedermann, if Kenneth Kyle Biedermann is entitled to possession of the child, at the end of each of Avian Anne Biedermann's exclusive periods of possession, at the place designated in this Standard Possession Order.

5. Personal Effects—Each conservator is ORDERED to return with the child the personal effects that the child brought at the beginning of the period of possession.

6. Designation of Competent Adult—Each conservator may designate any competent adult to pick up and return the child, as applicable. IT IS ORDERED that

a conservator or a designated competent adult be present when the child is picked up or returned.

7. Inability to Exercise Possession—Each conservator is ORDERED to give notice to the person in possession of the child on each occasion that the conservator will be unable to exercise that conservator's right of possession for any specified period.

8. Written Notice—Written notice shall be deemed to have been timely made if received or postmarked before or at the time that notice is due.

9. Notice to School and Avian Anne Biedermann—If Kenneth Kyle Biedermann's time of possession of the child ends at the time school resumes and for any reason the child is not or will not be returned to school, Kenneth Kyle Biedermann shall immediately notify the school and Avian Anne Biedermann that the child will not be or has not been returned to school.

This concludes the Standard Possession Order.

The periods of possession ordered above apply to each child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

Each party is ORDERED to provide the other party appropriate written authorization, within ten days after written request is received, as is necessary to allow the children to travel with the other party beyond the territorial limits of the United States. The parties are ORDERED to exchange passports as is necessary to allow such travel. The parties agree and IT IS ORDERED that this decree shall serve as written authorization for such travel.

IT IS ORDERED that before any party files suit for modification of the terms and conditions of conservatorship, possession, or support of the children, except in an emergency, that party shall attempt to mediate in good faith the controversy as provided in chapter 153 of the Texas Family Code. This requirement does not apply to actions brought to enforce this Final Decree of Divorce or to enforce any subsequent modifications of this decree. IT IS FURTHER ORDERED that the party wishing to modify the terms and conditions of conservatorship, possession, or support of the children shall give written notice to the other party of a desire to mediate the controversy. If the other party does not agree to attend mediation or fails to attend a scheduled mediation of the controversy within thirty days after receiving such written notice, the party desiring modification shall be released from the obligation to mediate and shall be free to file suit for modification.

IT IS ORDERED that Kenneth Kyle Biedermann is obligated to pay and shall pay to Avian Anne Biedermann child support of \$1,200.00 per month, with the first

payment being due and payable on in two installments per month of \$600.00 each, with the first installment of \$600.00 being due and payable on February 1, 2002, and a like installment of \$600.00 being due and payable on February 15, 2002, and with like installments of \$600.00 being due and payable on the 1st and 15th day of each and every month thereafter or until further order of the court.

IT IS ORDERED that any employer of Kenneth Kyle Biedermann shall be ordered to withhold from earnings for child support from the disposable earnings of Kenneth Kyle Biedermann for the support of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann.

IT IS FURTHER ORDERED that all amounts withheld from the disposable earnings of Kenneth Kyle Biedermann by the employer and paid in accordance with the order to that employer shall constitute a credit against the child-support obligation. Payment of the full amount of child support ordered paid by this decree through the means of withholding from earnings shall discharge the child-support obligation. If the amount withheld from earnings and credited against the child-support obligation is less than 100 percent of the amount ordered to be paid by this decree, the balance due remains an obligation of Kenneth Kyle Biedermann, and it is hereby ORDERED that Kenneth Kyle Biedermann pay the balance due directly to the local registry specified below.

On this date the Court authorized the issuance of an "Order/Notice to Withhold Income for Child Support."

IT IS ORDERED that all payments shall be made through Barbara Meyer, District Clerk, Gillespie County, 101 W. Main Room 204, Fredericksburg, Texas, 78624 and then remitted by that agency to Avian Anne Biedermann for the support of the children. IT IS FURTHER ORDERED that Kenneth Kyle Biedermann shall pay all fees charged by that agency.

IT IS FURTHER ORDERED that Kenneth Kyle Biedermann shall notify this Court and Avian Anne Biedermann by U.S. certified mail, return receipt requested, of any change of address and of any termination of employment. This notice shall be given no later than seven days after the change of address or the termination of employment. This notice or a subsequent notice shall also provide the current address of Kenneth Kyle Biedermann and the name and address of his current employer, whenever that information becomes available.

IT IS ORDERED that, on the request of a prosecuting attorney, the attorney general, the friend of the Court, Avian Anne Biedermann, or Kenneth Kyle Biedermann, the clerk of this Court shall cause a certified copy of the "Order/Notice to Withhold Income for Child Support" to be delivered to any employer. IT IS FURTHER ORDERED

that the clerk of this Court shall attach a copy of subchapter C of chapter 158 of the Texas Family Code for the information of any employer.

The Court finds that good cause exists or the parties have agreed that no order to withhold from earnings for child support be delivered to any employer of Kenneth Kyle Biedermann as long as no delinquency or other violation of this child-support order occurs. If a delinquency or other violation occurs, the clerk shall deliver the order to withhold earnings as provided above.

ACCORDINGLY, IT IS ORDERED that, as long as no delinquency or other violation of this child-support order occurs, all payments shall be made through Gillespie County Child Support Office to the attention of the District Clerk, Barbara Meyer, with cause no. [9284] and case identification [Biedermann v. Biedermann] stated as a memo thereon and thereafter promptly remitted to Avian Anne Biedermann for the support of the children. If a delinquency or other violation occurs, all payments shall be made in accordance with the order to withhold earnings as provided above.

IT IS ORDERED that Kenneth Kyle Biedermann shall pay, when due, all fees charged by the agency through whom child support is paid.

IT IS ORDERED that medical support shall be provided for the children as follows:

1. Kenneth Kyle Biedermann's Responsibility—It is the intent and purpose of this decree that Kenneth Kyle Biedermann shall, at all times, provide medical support for the children. IT IS THEREFORE ORDERED that, as additional child support, Kenneth Kyle Biedermann shall provide medical support for the parties' children, for as long as child support is payable under the terms of this decree, as set out herein.
2. Definition—"Health insurance" means insurance coverage that provides basic health-care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services, and may be provided in the form of an indemnity insurance contract or plan, a preferred provider organization or plan, a health maintenance organization, or any combination thereof.
3. Insurance through Kenneth Kyle Biedermann's Employment, Union, Trade Association, or Other Organization—The Court finds that the children are currently enrolled as beneficiaries of a health insurance plan provided through Kenneth Kyle Biedermann's employment or membership in a union, trade association, or other organization. IT IS ORDERED that Kenneth Kyle Biedermann shall, at his sole cost and expense, keep and maintain at all times in full force and effect the health insurance coverage that insures the parties' children through Kenneth Kyle Biedermann's employer, union, trade association, or other organization as issued by John Aldon, Life Insurance, P.O. Box 1508, Minneapolis, MN, 55480-1508, Group

Policy Certificate Number 977211-001, for as long as it is offered by his employer, union, trade association, or other organization. If his employer, union, trade association, or other organization subsequently changes health insurance benefits or carriers, Kenneth Kyle Biedermann is ORDERED to obtain and maintain coverage for the benefit of the children on the successor company or through such health insurance plan as is available through other employment, union, trade association, or other organization or other insurance provider.

4. Conversion of Policy—IT IS ORDERED that if the party through whose employment or membership in a union, trade association, or other organization health insurance has been provided for the children is leaving that employment, union, trade association, or other organization or for any other reason health insurance will not be available for the children through the employment or membership in a union, trade association, or other organization of either party, the party leaving employment or losing coverage shall, within ten days of termination of his or her employment or coverage, convert the policy to individual coverage for the children in an amount equal to or exceeding the coverage at the time his or her employment or coverage is terminated. Further, if that health insurance was available through Avian Anne Biedermann's employment or membership in a union, trade association, or other organization, Kenneth Kyle Biedermann shall reimburse Avian Anne Biedermann for the cost of the converted policy as follows: Kenneth Kyle Biedermann is ORDERED to pay to Avian Anne Biedermann at her last known address the cost of insuring the children under the converted policy, on the first day of each month after Kenneth Kyle Biedermann receives written notice of the premium from Avian Anne Biedermann for payment. Accompanying the first such written notification and any subsequent notifications informing of a change in the premium amount, Avian Anne Biedermann is ORDERED to provide Kenneth Kyle Biedermann with documentation from the carrier of the cost to Avian Anne Biedermann of providing coverage for the children.

5. If Policy Not Convertible—If the health insurance policy covering the children is not convertible and if no health insurance is available for the children through the employment or membership in a union, trade association, or other organization of either party, IT IS ORDERED that Kenneth Kyle Biedermann shall purchase and maintain, at his sole cost and expense, health insurance coverage for the children as set out in paragraph 3 above. Kenneth Kyle Biedermann is ORDERED to provide verification of the purchase of the insurance to Avian Anne Biedermann at Avian Anne Biedermann's last known address, including the insurance certificate number and the plan summary, no later than 10 days following the issuance of the policy.

6. Claim Forms—Except as provided in paragraph 8. below, the party who is not carrying the health insurance policy covering the children is ORDERED to submit to the party carrying the policy, within ten days of receiving them, any and all forms,

receipts, bills, and statements reflecting the health-care expenses the party not carrying the policy incurs on behalf of the children.

The party who is carrying the health insurance policy covering the child[ren] is ORDERED to submit all forms required by the insurance company for payment or reimbursement of health-care expenses incurred by either party on behalf of the child[ren] to the insurance carrier within ten days of that party's receiving any form, receipt, bill, or statement reflecting the expenses.

7. Constructive Trust for Payments Received—IT IS ORDERED that any insurance payments received by the party carrying the health insurance policy covering the children from the health insurance carrier as reimbursement for health-care expenses incurred by or on behalf of the children shall belong to the party who incurred and paid those expenses. IT IS FURTHER ORDERED that the party carrying the policy is designated a constructive trustee to receive any insurance checks or payments for health-care expenses incurred and paid by the other party, and the party carrying the policy shall endorse and forward the checks or payments, along with any explanation of benefits received, to the other party within three days of receiving them.

8. Filing by Party Not Carrying Insurance—In accordance with article 3.51-13 of the Texas Insurance Code, IT IS ORDERED that the party who is not carrying the health insurance policy covering the children may, at that party's option, file directly with the insurance carrier with whom coverage is provided for the benefit of the children any claims for health-care expenses, including, but not limited to, medical, hospitalization, and dental costs.

9. Secondary Coverage—IT IS ORDERED that nothing in this decree shall prevent either party from providing secondary health insurance coverage for the children at that party's sole cost and expense. IT IS FURTHER ORDERED that if a party provides secondary health insurance coverage for the children, both parties shall cooperate fully with regard to the handling and filing of claims with the insurance carrier providing the coverage in order to maximize the benefits available to the children and to ensure that the party who pays for health-care expenses for the children is reimbursed for the payment from both carriers to the fullest extent possible.

10. Compliance with Insurance Company Requirements—Each party is ORDERED to conform to all requirements imposed by the terms and conditions of the policy of health insurance covering the children in order to assure maximum reimbursement or direct payment by the insurance company of the incurred health-care expense, including but not limited to requirements for advance notice to carrier, second opinions, and the like. Each party is ORDERED to attempt to use "preferred providers," or services within the health maintenance organization, if applicable; however, this provision shall not apply if emergency care is required. Disallowance

of the bill by a health insurer shall not excuse the obligation of either party to make payment; however, if a bill is disallowed or the benefit reduced due to the failure of a party to follow procedures or requirements of the carrier, that party shall be wholly responsible for the increased portion of that bill.

No surgical procedure, other than in an emergency or those covered by insurance, shall be performed on the child unless the parent consenting to surgery has first consulted with at least two medical doctors, both of whom state an opinion that the surgery is medically necessary. A parent who fails to obtain the required medical opinions before consent to surgery on the child shall be wholly responsible for all medical and hospital expense incurred in connection therewith.

If health insurance coverage for the children is provided through a health maintenance organization (HMO) or preferred provider organization (PPO), the parties are ORDERED to use health-care providers who are employed by the HMO or approved by the PPO whenever feasible. If health-care expenses are incurred by using that HMO or PPO plan, Kenneth Kyle Biedermann is ORDERED to pay 50 percent and Avian Anne Biedermann is ORDERED to pay 50 percent of all reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of the parties' children, including, without limitation, any copayments for office visits or prescription drugs, the yearly deductible, if any, and medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges, for as long as child support is payable under the terms of this decree. If a party incurs health-care expenses for a child by using the services of health-care providers not employed by the HMO or approved by the PPO, except in an emergency, without the written agreement of the other party, the party incurring the services is ORDERED to pay 50 percent and the other party is ORDERED to pay 50 percent of all reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of the parties' children, as set out above. If a party incurs health-care expenses for a child by using the services of health-care providers not employed by the HMO or approved by the PPO in an emergency or with the written agreement of the other party, the party incurring the services is ORDERED to pay 50 percent and the other party is ORDERED to pay 50 percent of all reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of the parties' children, as set out above.]

If the children are enrolled in a health-care plan that is not an HMO or a PPO, Kenneth Kyle Biedermann is ORDERED to pay 50 percent and Avian Anne Biedermann is ORDERED to pay 50 percent of all reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of the parties' children, including, without limitation, the yearly deductible, if any, and medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges, for as long as child support is payable under the terms of this decree.

11. Payment of Uninsured Expenses—IT IS ORDERED that the party who pays for a health-care expense on behalf of the children shall submit to the other party, within ten days of receiving them, all forms, receipts, bills, and explanations of benefits paid reflecting the uninsured portion of the health-care expenses the paying party incurs on behalf of the children. IT IS FURTHER ORDERED that, within ten days after the nonpaying party receives the explanation of benefits stating benefits paid, that party shall pay his or her share of the uninsured portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the paying party for any advance payment exceeding the paying party's share of the expenses.

12. Exclusions—The provisions above concerning uninsured expenses shall not be interpreted to include expenses for travel to and from the health-care provider or nonprescription medication.

13. Reasonableness of Charges—IT IS ORDERED that reasonableness of the charges for health-care expenses shall be presumed on presentation of the bill to a party and that disallowance of the bill by a health insurer shall not excuse that party's obligation to make payment or reimbursement as otherwise provided herein.

14. Information Required—IT IS ORDERED that a party providing health insurance shall furnish to the other party the following information no later than the thirtieth day after the date the notice of the rendition of this decree is received:

- (a) the Social Security number of the party providing insurance;
- (b) the name and address of the employer of the party providing insurance;
- (c) whether the employer is self-insured or has health insurance available;
- (d) proof that health insurance has been provided for the children; and
- (e) the name of the health insurance carrier, the number of the policy, a copy of the policy and schedule of benefits, a health insurance membership card, claim forms, and any other information necessary to submit a claim or, if the employer is self-insured, a copy of the schedule of benefits, a membership card, claim forms, and any other information necessary to submit a claim.

IT IS FURTHER ORDERED that any party carrying health insurance on the children shall furnish to the other party a copy of any renewals or changes to the policy no later than the fifteenth day after the renewal or change is received.

IT IS FURTHER ORDERED that a party providing health insurance shall provide to the other party any additional information regarding health insurance coverage that becomes available to the party providing insurance. IT IS FURTHER ORDERED that the information shall be provided no later than the fifteenth day after the date the information is received.

15. Order to Employer Entered—On this date an "Order/Notice to Withhold Income for Child Support" and a "Medical Child-Support Order" were entered by the Court. For the purpose of section 1169 of title 29 of the United States Code, the party not carrying the health insurance policy is designated the custodial parent and alternate recipient's representative.

16. Termination or Lapse of Insurance—If the health insurance coverage for the children lapses or terminates, the party who is providing the insurance is ORDERED to notify the other party no later than the fifteenth day after the date of termination or lapse. If additional health insurance is available or becomes available to Kenneth Kyle Biedermann for the children, Kenneth Kyle Biedermann must notify Avian Anne Biedermann no later than the fifteenth day after the date the insurance becomes available. Avian Anne Biedermann must enroll the child in a health insurance plan at the next available enrollment period.

17. Place of Transmittal—IT IS ORDERED that all bills, invoices, statements, claims, explanations of benefits, insurance policies, medical insurance identification cards, other documents, and written notices, as well as payments, required to be transmitted by one party to the other under the health-care coverage and health insurance provisions of this decree shall be transmitted by the sending party to the residence of the receiving party.

18. WARNING—A PARENT ORDERED TO PROVIDE HEALTH INSURANCE WHO FAILS TO DO SO IS LIABLE FOR NECESSARY MEDICAL EXPENSES OF THE Children, WITHOUT REGARD TO WHETHER THE EXPENSES WOULD HAVE BEEN PAID IF HEALTH INSURANCE HAD BEEN PROVIDED.

IT IS ORDERED that the child support as prescribed in this decree shall be exclusively discharged in the manner ordered and that any direct payments made by Kenneth Kyle Biedermann to Avian Anne Biedermann or any expenditures incurred by Kenneth Kyle Biedermann during Kenneth Kyle Biedermann's periods of possession of or access to the children, as prescribed in this decree, for food, clothing, gifts, travel, shelter, or entertainment are deemed in addition to and not in lieu of the support ordered in this decree.

IT IS ORDERED that the provisions for child support in this decree shall be an obligation of the estate of Kenneth Kyle Biedermann and shall not terminate on the death of Kenneth Kyle Biedermann. Payments received for the benefit of the children from the Social Security Administration, Department of Veterans Affairs, other government agency, or life insurance shall be a credit against this obligation.

Each party is ORDERED to inform the other party within twenty-four hours of any medical condition of the parties' children requiring surgical intervention, hospitalization, or both.

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:

Name: Avian Anne Biedermann
Social Security number: 451-37-2272
Driver's license number and issuing state: 00705712 TEXAS
Current residence address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Mailing address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Home telephone number: 830-997-2622
Name of employer: PRIM ROSE PATH SALON
Address of employment: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Work telephone number: 830-997-2622

Name: Kenneth Kyle Biedermann
Social Security number: 101-54-5263
Driver's license number and issuing state: 02811412 TEXAS
Current residence address: 411 EAST COLLEGE,
FREDERICKSBURG, TEXAS
Mailing address: 411 EAST COLLEGE,
FREDERICKSBURG, TEXAS
Home telephone number: 830-990-4309
Name of employer: BIEDERMANN'S ACE HARDWARE
Address of employment: 1102 E. MAIN,
FREDERICKSBURG, TEXAS
Work telephone number: 830-997-7611

Name: KYLA RAE BIEDERMANN

Social Security number: 643-28-5526
Driver's license number and issuing state: N/A
Current residence address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Mailing address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Home telephone number: 830-997-2622
Name of employer: N/A
Address of employment: N/A
Work telephone number: N/A

Name: EMILY LAINE BIEDERMANN
Social Security number: 644-36-1424
Driver's license number and issuing state: N/A
Current residence address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Mailing address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Home telephone number: 830-997-2622
Name of employer: N/A
Address of employment: N/A
Work telephone number: N/A

Name: LOREN NOEL BIEDERMANN
Social Security number: 641-44-9258
Driver's license number and issuing state: N/A
Current residence address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Mailing address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Home telephone number: 830-997-2622
Name of employer: N/A
Address of employment: N/A
Work telephone number: N/A

Name: DANA TRUE BIEDERMANN
Social Security number: 633-52-8790
Driver's license number and issuing state: N/A

Current residence address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Mailing address: 110 W. HACKBERRY,
FREDERICKSBURG, TEXAS
Home telephone number: 830-997-2622
Name of employer: N/A
Address of employment: N/A
Work telephone number: N/A

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Central File Maintenance, P.O. Box 12048, Austin, Texas 78711-2048.

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

Division of Marital Estate

The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party and the children of the marriage.

The Court finds that the parties have agreed, AND IT IS SO ORDERED, that Wallace T. Ferguson shall serve as an arbitrator ("Arbitrator") under the provisions for binding arbitration as provided in chapter 171 of the Texas Civil Practice and Remedies Code. The Arbitrator shall determine the finishing out work needed to complete the remodeling process started by the parties at the residence awarded to Petitioner herein located at 110 W. Hackberry, Fredericksburg, Texas. The finishing out work would be handled only by a qualified technician or technicians skilled in the trade or craft as to each specific job which is to be completed and said jobs will be completed in not more than 90 days from the date of rendition of divorce. The work shall not be performed by Kenneth Kyle Biedermann. The cost of the remodeling shall be borne by Kenneth Kyle Biedermann. The Arbitrator shall also arbitrate any disputes related to the walk-through of Kenneth Kyle Biedermann to retrieve any clothing, items of personal adornment or his personal books. The walk-through shall occur on or before thirty (30) days from the entry of this Agreed Final Decree of Divorce. The cost of the arbitrator will be paid fifty percent (50%) by KENNETH KYLE BIEDERMAN and fifty percent (50%) by Avian Anne Biedermann.

IT IS ORDERED AND DECREED that the husband, Kenneth Kyle Biedermann, is awarded the following as his sole and separate property, and the wife is divested of all right, title, interest, and claim in and to that property:

H-1. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of the husband or subject to his sole control.

H-2. The following furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment currently in the possession of the wife: two (2) tables in the garage, and any items determined by the Arbitrator appointed herein to be husband's clothing, books and items of husband's personal adornment or are clearly husband's separate property.

H-3. All clothing, jewelry, and other personal effects in the possession of the husband or subject to his sole control.

H-4. The following policies of insurance insuring the husband's life: Northwestern Mutual Policy No. 6751756; Farmer's Life Insurance Co. Policy # 006096134.

H-5. The closely-held business B L & H, Inc. dba Biedermann's Ace Lumber & Hardware, including but not limited to all furniture, fixtures, machinery, equipment, inventory, cash, receivables, accounts, goods, and supplies; all personal property used in connection with the operation of the business; and all rights and privileges, past, present, or future, arising out of or in connection with the operation of the business, together with any and all debt thereon or associated therewith.

IT IS ORDERED AND DECREED that the wife, Avian Anne Biedermann, is awarded the following as her sole and separate property, and the husband is divested of all right, title, interest, and claim in and to that property:

W-1. The following real property, including but not limited to any escrow funds, prepaid insurance, utility deposits, keys, house plans, home security access and code, garage door opener, warranties and service contracts, and title and closing documents, subject to first and second liens:

Lot Eight (8), Block L, BURGDORF ADDITION, an addition in Fredericksburg, Gillespie County, Texas, according to the map or plat or record in Volume 13, Page 481, Deed Records of Gillespie County, Texas, commonly known as 110 W. Hackberry, Fredericksburg, Texas.

W-2. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of the wife or subject to her sole control except those awarded to Husband in H-2 above.

W-3. All clothing, jewelry, and other personal effects in the possession of the wife or subject to her sole control.

W-4. Two G. Harvey prints in wife's possession acquired during marriage.

W-5. All funds on deposit, together with accrued but unpaid interest, in the following banks, savings institutions, or other financial institutions: St. Joseph Credit Union account number 2437101 in the name of Avian A. Biedermann, The Primrose Path Salon; ~~Security State Bank & Trust Account No. 3012614 in the name of Kyle or Avian Biedermann.~~ *Stm JN by Stm w/h AAB.*

W-6. The 1999 Pontiac Grand Am motor vehicle, vehicle identification number 1G2NW52E3XM813480, together with all prepaid insurance, keys, and title documents.

W-7. The sole proprietorship known as The Primrose Path Salon, including but not limited to all furniture, fixtures, machinery, equipment, inventory, cash, receivables, accounts, goods, and supplies; all personal property used in connection with the operation of the business; and all rights and privileges, past, present, or future, arising out of or in connection with the operation of the business.

W-8. All of the materials in the garage and in the shed at 110 W. Hackberry, Fredericksburg, Texas.

IT IS ORDERED AND DECREED that the husband, Kenneth Kyle Biedermann, shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold the wife and her property harmless from any failure to so discharge, these items:

H-1. The following debts, charges, liabilities, credit card balances and obligations:
MBNA America account no. 4313 0258 7300 6275 in the name of Kenneth K. Biedermann
MBNA America account no. 4800 1217 6913 3693 in the name of Kenneth K. Biedermann
Household Bank account no. 5404240004009075 in the name of Kenneth K. Biedermann
Capital One account no. 4305721923322882 in the name of Kenneth Biedermann
Farm Plan account no. 7531437452 in the name of K. Biedermann

Discover Card account no. 6011008744510758 in the name of Kenneth K. Biedermann
Amounts due Heritage School

H-2. Legal fees for Avian Anne Biedermann in the amount of Fifteen Thousand and no/100 Dollars (\$ 15,000.00) cash, certified check or money order payable to the Law Offices of John Nichols at 1301 McKinney, Suite 3636, Houston, Texas, 77010, the time of and as a condition precedent to the rendition, signature and entry of this Agreed Final Decree of Divorce.

H-3. Any and all debts, charges, liabilities, and other obligations incurred solely by the husband (including all loans from his parents, Kenneth Paul Biedermann and Kathryn Biedermann) at any time, and from and after the entry of this Agreed Final Decree of Divorce unless express provision is made in this decree to the contrary.

H-4. All encumbrances, ad valorem taxes, liens, assessments, or other charges due or to become due on the real and personal property awarded to the husband in this decree unless express provision is made in this decree to the contrary.

H-5. One-half ($\frac{1}{2}$) of the fee of Kurt Rudkin, the ad litem attorney in this matter.

H-6. Dr. Jack Ferrell's bill to Kenneth Kyle Biedermann.

H-7. The cost of remodeling the residence awarded herein to Avian Anne Biedermann as determined by the Arbitrator as set forth on page 27 herein.

H-8. The amounts due on the Temporary Family Support obligations of Kenneth Kyle Biedermann as set forth herein on pages 33-34 under the heading *Continuation of Temporary Orders as to Temporary Family Support Only*.

H-9 One-half ($\frac{1}{2}$) of the Arbitrator's fee of Wallace T. Ferguson.

IT IS ORDERED AND DECREED that the wife shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold the husband and his property harmless from any failure to so discharge, these items:

W-1. The balance due, including principal, interest, tax, and insurance escrow, on the following promissory notes: (1) Note dated February 6, 1998 in the principal amount of \$ 70,500.00 payable to Fort Worth Mortgage, a division of Colonial Savings, F.A. (now serviced by Greenpoint Mortgage Account # 00087838475) and secured by a vendor's lien retained in deed of even date and a Deed of Trust of even

IT IS ORDERED AND DECREED that, for the calendar year 2002, each party shall timely pay and indemnify and hold the other party and his or her property harmless from any federal income tax liability attributable to the personal earnings of the reporting party and any net income resulting from property subject to the sole management and control of the reporting party from January 1 of that year through the date of divorce and for all such postdivorce earnings and income.

IT IS ORDERED AND DECREED that each party shall use as a credit against his or her tax liability for 2002 all estimated tax payments and wage/salary withholding made by him or her, 50 percent of the parties' prior year overpayments and credits, and 50 percent of the estimated payments made in the names of both parties.

IT IS ORDERED AND DECREED that for calendar year 2002, each party shall indemnify and hold the other party and his or her property harmless from any tax liability associated with the reporting party's individual tax return for that year unless the parties have agreed to allocate their tax liability in a manner different from that reflected on their returns.

IT IS ORDERED AND DECREED that if a refund is made for overpayment of taxes for any year during the parties' marriage through December 31 of 2001, each party shall be entitled to one-half of the refund, and the party receiving the refund check is designated a constructive trustee for the benefit of the other party, to the extent of one-half of the total amount of the refund, and shall pay to the other party one-half of the total amount of the refund check within five days of receipt of the refund check. Either party is ORDERED to endorse a refund check on presentation by the other party.

IT IS ORDERED AND DECREED that each party shall furnish such information to the other party as is requested to prepare federal income tax returns for 2000, 2001 and 2002 within thirty days of receipt of a written request for the information, and in no event shall the available information be exchanged later than March 1ST of the year following such calendar year. As requested information becomes available after that date, it shall be provided within ten days of receipt.

IT IS ORDERED AND DECREED that each party shall preserve for a period of seven years from the date of divorce all financial records relating to the community estate. Each party is ORDERED to allow the other party access to these records to determine acquisition dates or tax basis or to respond to an IRS examination within five days of receipt of written notice from the other party. Access shall include the right to copy the records.

IT IS ORDERED AND DECREED that all payments made to the other party in accordance with the allocation provisions for payment of federal income taxes

contained in this Final Decree of Divorce are not deemed income to the party receiving those payments but are part of the property division and necessary for a just and right division of the parties' estate.

IT IS ORDERED AND DECREED that any assets of the parties not awarded or divided by this Final Decree of Divorce are subject to future division as provided in the Texas Family Code.

IT IS FURTHER ORDERED AND DECREED, as a part of the division of the estate of the parties, that any community liability not expressly assumed by a party under this decree is to be paid by the party incurring the liability, and the party incurring the liability shall indemnify and hold the other party and his or her property harmless from any failure to so discharge the liability.

IT IS ORDERED AND DECREED that the following described property is confirmed as the separate property of Avian Anne Biedermann:

- Gold and diamond ring (Pre-marriage)
- Garnet and pearl antique gold ring (Pre-marriage)
- Antique cans (Pre-marriage)
- James Avery gold swirl ring (Pre-marriage)
- Pearl and diamond chip ring (Pre-marriage)
- Pair of triangle shaped earrings (Pre-marriage)
- Diamond chip necklace (Pre-marriage)
- Wooden Icebox (Gift from Dad)
- Bookshelf (Gift from and made by Randy Stark)
- Ruby and diamond ring (Gift from Dad)
- Dresser (Gift from Dad)
- Old trunk in bedroom (Gift from Dad)
- Claw foot side table (Gift from Dad)
- Rifle (Gift from Dad)
- 357 Magnum (Gift from Dad)
- Blue antique couch (Gift from Mother)
- Bedside table (Gift from Randy Stark)
- Desk in kitchen (Gift from Randy Stark)
- Gold bracelet (Gift from Dad)
- Princess ring and earrings (Gift from Dad)
- Antique wedding ring set (Gift from Grandmother)
- Heart shaped ruby and Diamond chip ring (Gift from Grandmother)
- Two G. Harvey prints
- Antique wedding yellow and white gold band (Gift from Grandmother)
- Silver and garnet ring (Gift from Grandmother)
- Pair of emerald and diamond earrings (Gift from Mother)

Antique pair of pearl and rhinestone earrings (Gift from Mother)

IT IS ORDERED AND DECREED that the following described property is confirmed as the separate property of Kenneth Kyle Biedermann:

Old style Coke Machine
Round Dining room table
Rocking chair in child's room
Brown trunk in living room
Wooden filing cabinet
Adirondeck chairs (2)
Claw Foot Tub
Harvey Print
Wedding band
Rocking chair in children's room
Brown trunk in living room
Wooden chairs

IT IS ORDERED AND DECREED that no provision of this decree shall be construed as alimony under the Internal Revenue Code, except as this decree expressly provides for payment of maintenance or alimony under the Internal Revenue Code.

Transfer and Delivery of Property

Kenneth Kyle Biedermann and Avian Anne Biedermann are ORDERED to execute, have acknowledged, and deliver to JOHN F. NICHOLS, SR. these instruments:

1. Special Warranty Deed in the form attached to this Final Decree of Divorce as Exhibit 1.
2. Deed of Trust to Secure Assumption in the form attached to this Final Decree of Divorce as Exhibit 2.
3. Release from the parents of Kenneth Kyle Biedermann releasing Avian Anne Biedermann from any and all liability for amounts gifted or advanced to Kenneth Kyle Biedermann and Avian Anne Biedermann.

This decree shall serve as a muniment of title to transfer ownership of all property awarded to any party in this Final Decree of Divorce.

COBRA Continuation Coverage

Kenneth Kyle Biedermann is ORDERED to give written notice to his employer within fifteen days of the date of the signing of this Agreed Final Decree of Divorce that Avian Anne Biedermann is exercising her option to continue the existing health insurance coverage, and Avian Anne Biedermann is FURTHER ORDERED to pay all premiums required to maintain the coverage. IT IS FURTHER ORDERED that the notice to the employer shall include the last known mailing address of Avian Anne Biedermann and that a copy of the notice shall be sent to AVIAN ANNE BIDERMAN. Kenneth Kyle Biedermann is also ORDERED to furnish to Avian Anne Biedermann a copy of the presently existing health insurance card and any explanation of benefits under the coverage within fifteen days from the signing of this decree.

Court Costs

IT IS ORDERED AND DECREED that costs of court are to be borne by the party who incurred them.

Continuation of Temporary Orders as to Temporary Family Support Only

IT IS ORDERED AND DECREED that Petitioner and Respondent are discharged from all further liabilities and obligations imposed by the temporary orders of this court save and except for the Temporary Family Support obligation of Kenneth Kyle Biedermann set forth on page 3 of the *Agreed Temporary Orders Pursuant to "Mediation Agreement on Temporary Order Until March 22, 2001"*. The Court orders that Kenneth Kyle Biedermann remains liable for the following items due through and including the date of entry of this Agreed Final Decree of Divorce, to-wit:

- (1) Monthly mortgage payment of \$ 928.00 to Greenpoint Mortgage Funding on the 110 W. Hackberry residence;
- (2) Monthly home equity payment of \$ 292.14 to BankOne, N.A. on the equity loan on 110 W. Hackberry residence;
- (3) Monthly gas, electric and water bills for the 110 W. Hackberry residence awarded to Avian Anne Biedermann; and
- (4) An amount not to exceed \$ 50.00 per month for Avian Anne Biedermann's vehicle expenses at Jeks.

Merger of Mediation Agreement

This Agreed Final Decree of Divorce is stipulated to represent a merger of a mediation agreement between the parties. To the extent there exist any differences between the mediation agreement and this Agreed Final Decree of Divorce, this Agreed Final Decree of Divorce shall control in all instances.

Discharge from Discovery Retention Requirement

IT IS ORDERED AND DECREED that the parties and their respective attorneys are discharged from the requirement of keeping and storing the documents produced in this case in accordance with rule 191.4(d) of the Texas Rules of Civil Procedure.

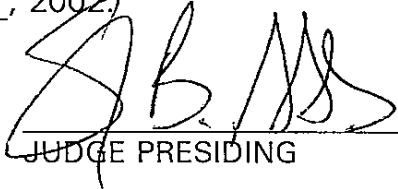
Clarifying Orders

Without affecting the finality of this Final Decree of Divorce, this Court expressly reserves the right to make orders necessary to clarify and enforce this decree.

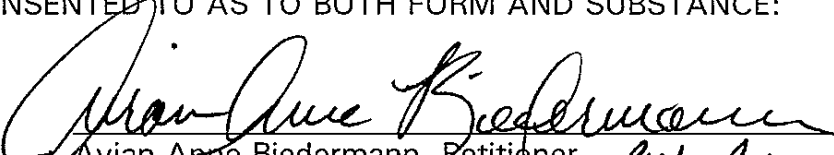
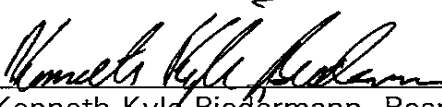
Relief Not Granted

IT IS ORDERED AND DECREED that all relief requested in this case and not expressly granted is denied.

Date of Judgment

SIGNED on Jan. 29, 2002,

JUDGE PRESIDING

APPROVED AND CONSENTED TO AS TO BOTH FORM AND SUBSTANCE:

1 plain copy do-3-08

Avian Anne Biedermann, Petitioner *vs. Cust. Copy w/ C.B. Rules 1-29-02 & 9/8/01*

Kenneth Kyle Biedermann, Respondent *NO COPY - PER REQUEST C.B. RULES 1-29-02*

APPROVED AS TO FORM ONLY:

LAW OFFICES OF JOHN NICHOLS

JOHN NICHOLS *NO COPY - PER REQUEST*

SBT#. 14996000

PAMELA K. BERGMAN

SBT # 00795804

Chevron Tower

1301 McKinney, Suite 3636

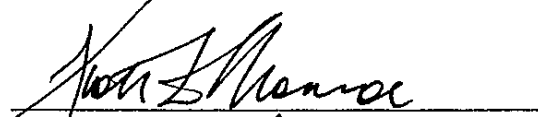
Houston, Texas 77010

713-654-0708 (telephone)

713-654-0706 (fax)

Attorney for Avian Ann Biedermann

POLLARD & MONROE



Scott F. Monroe *COPY 1-29-02*

SBT#: 14272700

951 Main Street

Kerrville, Texas 78028

830-896-7500 (telephone)

830-257-7079 (fax)

Attorneys for Kenneth Kyle Biedermann

Kurtis S. Rudkin

SBT# 00792103

1414 East Blanco Road, Suite 7

Boerne, Texas 78006

830/249-8472 (telephone)

830/249-6315 (fax)

Attorney Ad Litem

POLLARD & MONROE

Scott F. Monroe
SBT#: 14272700
951 Main Street
Kerrville, Texas 78028
830-896-7500 (telephone)
830-257-7079 (fax)
Attorneys for Kenneth Kyle Biedermann



Kurtis S. Rudkin
SBT# 00792103
1414 East Blanco Road, Suite 7
Boerne, Texas 78006
830/249-8472 (telephone)
830/249-6315 (fax)
Attorney Ad Litem

Date of Judgment

SIGNED on _____, 2002.

JUDGE PRESIDING

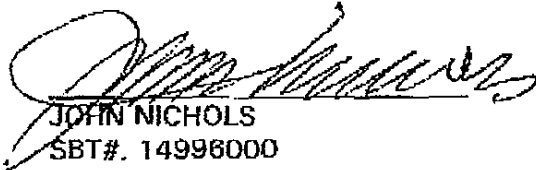
APPROVED AND CONSENTED TO AS TO BOTH FORM AND SUBSTANCE:

Avian Anne Biedermann, Petitioner

Kenneth Kyle Biedermann, Respondent

APPROVED AS TO FORM ONLY:

LAW OFFICES OF JOHN NICHOLS



JOHN NICHOLS
SBT#. 14996000
PAMELA K. BERGMAN
SBT # 00795804
Chevron Tower
1301 McKinney, Suite 3636
Houston, Texas 77010
713-654-0708 (telephone)
713-654-0706 (fax)
Attorney for Avian Ann Biedermann

Q:\TEBBIE\COMPLA\LEXUS
DISTRICT CLERK
SUBJECT: AVIAN ANNE BIEDERMANN/PLEADING/Agreed Final Decree of Divorce 1-28-02 Revised.wpd

Page 36 of 37

01-28-2002 06:12PM

09876543264532

P. 02

WALLACE T. FERGUSON
ANDREW J. HIX

Ferguson & Hix
ATTORNEYS AT LAW
P.O. BOX 1106
BOERNE, TEXAS 78006
TELEPHONE (830) 249-9595

 **COPY** TELECOPIER
(830) 249-2999

February 28, 2002

Ms. Barbara Meyer
Gillespie County District Clerk
101 W. Main Street, #204
Fredericksburg TX 78624-3700

RE: No. 9284

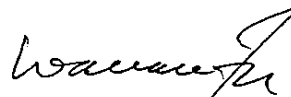
In the Matter of the Marriage of Avian Ann Biedermann and Kenneth Kyle Biedermann and In the Interest of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann, Minor Children

Dear Ms. Meyer:

Please file the original Arbitration Award and return a file-stamped copy in the envelope provided. ✓ 3-5-02mm,

Thank you for your assistance in this matter.

Respectfully,



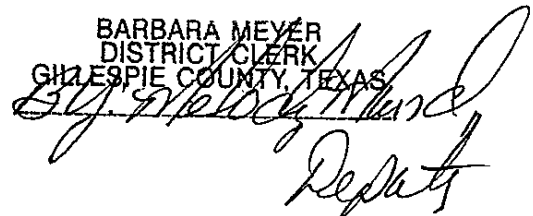
Wallace T. Ferguson
Attorney at Law

WTF:jes
Enclosures

xc: Mr. Scott Monroe
Mr. John F. Nichols, Sr.

FILED
At 12:38 O'clock P. M
MAR 04 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS


Deputy



NO. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN
MINOR CHILDREN

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IN THE DISTRICT COURT

216TH JUDICIAL DISTRICT

GILLESPIE COUNTY, TEXAS

ARBITRATION AWARD

On February 27, 2002, pursuant to proper notice and the agreement of the parties and their attorneys, an arbitration hearing was conducted at 110 West Hackberry, Fredericksburg, Texas. Present were Petitioner, AVIAN ANN BIEDERMANN, Respondent, KENNETH KYLE BIEDERMANN, and the Arbitrator, WALLACE T. FERGUSON, who was assisted by Gillespie County Sheriff's Deputy, Brian Vorauer. Having conducted the hearing and inspected the premises at 110 West Hackberry, Fredericksburg, Texas, and, pursuant to Chapter 171 of the *Texas Civil Practice and Remedies Code*, and Agreed Final Decree of Divorce, dated January 29, 2002, the following binding arbitration award is made:

1. Respondent, KENNETH KYLE BIEDERMANN, is awarded the following items of personal property as his sole and separate property and Petitioner, AVIAN ANN BIEDERMANN is divested of all right, title, and interest therein:
 - A. Trunk and contents
 - B. Biedermann family photographs
 - C. Four (4) cassette tapes
 - D. G. Harvey print of church
 - E. Video tapes [three (3) of his choice]
 - F. Various books from front hall bookshelf:
Bill Gothard books
Medical Training Institute

FILED
At 12:30'clock P.M.

MAR 04 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Everyone Bible
Quinz Mats
Christ - McArthur
Naval Heroes
Peretti - Darkness
Church Leadership (6 volumes)
Character Sketches
Prophet
Book of Life set

- G. Four (4) cassette tapes from Changing Room
- H. Battery
- I. Rollers
- J. Box with hardware
- K. Router top
- L. Santa Fe bike
- M. Shelf from bed & breakfast
- N. Chess board
- O. Suburban seat
- P. Luggage carriers (2)
- Q. Rainbow vacuum
- R. Various magazines
- S. Model cars (4)
- T. Jewelry boxes (2)
- U. Clabber girl sign
- V. Bed steads (2)
- W. Green bench

- X. Wagon wheels (2)
- Y. Adirondack chairs (2)
- Z. Petitioner is Ordered to copy the parties' family videos and upon payment by Respondent for the costs of copying, deliver copies of same to Respondent within thirty (30) days of the date this Arbitration Award is signed.

Any of the above property not already delivered to Respondent will be delivered to him by Petitioner within thirty (30) days from the date this Arbitration Award is signed.

2. Respondent, KENNETH KYLE BIEDERMANN, is ORDERED to pay Petitioner, AVIAN ANN BIEDERMANN, for the following finishing-out work needed to complete the remodeling process to the residence located at 110 West Hackberry, Fredericksburg, Texas. Respondent will be responsible for payment of all labor and materials to complete the remodeling process in a good and workmanlike manner. The labor will be performed by a qualified technician or technicians skilled in the trade or craft as to each specific job required to complete the remodeling. All work is to be completed on or before 5:00 p.m. on September 2, 2002.

None of the labor described herein will be performed by Respondent, KENNETH KYLE BIEDERMANN.

Petitioner, AVIAN ANN BIEDERMANN, will obtain written cost estimates for all labor and materials needed to perform the remodeling and submit them, by certified mail, return receipt requested, to Respondent, KENNETH KYLE BIEDERMANN on or before 5:00 .m. on March 20, 2002. Unless Respondent, KENNETH KYLE BIEDERMANN, objects in writing to said estimates, via certified mail, return receipt requested, postmarked within five (5) days from the day he receives said estimates and forwarded to WALLACE T. FERGUSON, Arbitrator, Respondent, KENNETH KYLE BIEDERMANN, is Ordered to remit the total sum of said estimates to Petitioner, AVIAN ANN BIEDERMANN, on or before March 29, 2002, payable by cashier's check and mailed certified mail, return receipt requested. If timely objection is made, the Arbitrator may, but will not be required, to adjust or revise the amounts of the cost estimates.

- A. Master Bedroom: The exposed wiring hanging from the ceiling will be covered by new beaded board ceiling which will be installed and painted. Sheet rock on the walls will be completed up to the new ceiling and it will be taped and floated so as to smoothly meet existing sheet rock. The existing doorway will be framed and a new door will be installed. The room and door will be repainted.

- B. Changing Room: This room will be repainted to match the Master Bedroom.
- C. Entryway: Trim will be added to the hallway and painted. The front door will be sanded to remove obvious defects and repainted. A new screen will be installed on the front door.
- D. Outside Back Door: Four or five boards and nails and other materials will be used to repair the gap existing in the small wood porch.
- E. Kitchen and Breakfast Room: Sheetrock will be added to the existing gap in the ceiling between the breakfast room and kitchen to create one smooth surface. Old floor covering will be removed and new floor covering will be installed to cover the breakfast room and kitchen floors. The kitchen floors will be trimmed and the trim painted. The kitchen and breakfast room will be repainted.
- F. Family Room: Base trim and other materials will be added and painted to finish the existing step from the kitchen to the family room.

All cost estimates will be for standard quality materials and labor at rates customary in Fredericksburg, Texas. Floor covering will not cost more than \$15.00 per square foot. Likewise, estimates for all paint used will be based on the cost of "Ace" brand satin paint.

All disputes regarding the performance of the above notice requirements, estimates, remodeling work and the delivery or award of the personal property to Respondent, KENNETH KYLE BIEDERMANN, or other matters of whatever kind or character in connection with this arbitration and award, will be the subject of binding arbitration before this Arbitrator and all costs involved will be allotted between the parties as ordered by the Arbitrator. All arbitration costs to date are ordered paid equally to the Arbitrator by the parties.

Notices and other correspondence in this matter will all be via certified mail with copies of all such documents sent to the Arbitrator. The addresses for all notices and correspondence will be:

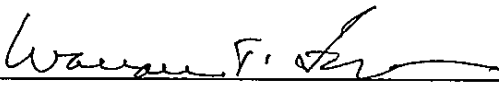
Avian Ann Biedermann

110 West Hackberry
Fredericksburg, Texas 78624

Kenneth Kyle Biedermann
411 East College
Fredericksburg, Texas 78624

Wallace T. Ferguson
Attorney at Law
302 East Blanco
Boerne, Texas 78006

SIGNED on February 28, 2002.


WALLACE T. FERGUSON, Arbitrator ✓ 3-5-02
mm

POLLARD & MONROE
ATTORNEYS AT LAW

951 MAIN STREET
KERRVILLE, TEXAS 78028

TELEPHONE: (830) 896-7500
TELECOPIER: (830) 257-7079
E-MAIL: tpollard@ktc.com
E-MAIL: smonroe@ktc.com

L. W. POLLARD (1902-1981)
THOMAS W. POLLARD
SCOTT F. MONROE

April 15, 2002

FILED
At 11:16 O'clock A.M.

APR 17 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

By: [Signature] Deputy

Ms. Barbara Meyer
District Clerk
Gillespie County Courthouse, Room 204
101 W. Main Street
Fredericksburg, Texas 78624-3700

VIA: Fax (830) 997-9958

RE: Cause No. 9284; Biedermann vs. Biedermann

Dear Ms. Meyer:

Please file the enclosed Motion to Vacate Arbitration Award and/or Rehearing of Arbitration in the above stated cause. Enclosed also is a photocopy to be file stamped and returned to me for my records. *✓ 4-17-02 m.m.*

Thank you very much.

Yours very truly,

Scott F. Monroe
by *klh*
Scott F. Monroe

SFM/klh

GILLESPIE COUNTY, TEXAS
cc: The Honorable Brandon Davis
The Honorable Wallace T. Ferguson

FILED

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT

OF GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

MOTION TO VACATE ARBITRATION AWARD
AND/OR REHEARING OF ARBITRATION

TO SAID HONORABLE COURT:

COMES NOW, Kenneth Kyle Biedermann, Respondent in the above styled and numbered cause, and files this his Motion to Vacate Arbitration Award and/or Rehearing of Arbitration, and for good cause would respectfully show the Court the following:

I.

On February 27, 2002 binding Arbitration was conducted by The Honorable Wallace T. Ferguson. The purpose for the arbitration, primarily, was to determine what items of personal property the Respondent would be allowed to retrieve from the residence of the parties, and what items of repair work would Respondent be required to perform on the residence of the parties. Ancillary to the specific items of repair work that needed to be done would be the manner in which bids were obtained and the work was performed.

II.

FILED
At 11:17 O'clock AM

APR 17 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Handwritten Signature]

In accordance therewith, the Arbitrator issued an Arbitration Award dated February 28, 2002, a photocopy of which is attached hereto as Exhibit "A". In such Award, the Respondent was ordered to pay for certain repairs to the residence of the parties. Additionally, the Petitioner was required to obtain "written cost estimates" for all labor and materials needed to perform the remodeling and submit them by certified mail. Respondent thereafter had a certain amount of time in which to object "said estimates".

In spite of the ruling of the Arbitrator, the Petitioner only obtained one (1) estimate for the vast majority of the work to be performed. Additionally, the Respondent was not allowed to obtain estimates himself for the work to be performed. The result of this is that the estimate obtained is subject to manipulation and deceit. It would cause no harm whatsoever to require the Petitioner to get a certain number of bids and to allow the Respondent to get a certain number of bids so that the Arbitrator could select a competitive bid for the work to be performed.

III.

Additionally, Respondent would show the Court that the Arbitrator proposes that the funds for the repairs, whatever they may end up being, be paid directly to the Petitioner. Respondent objects to such payment being made to the Petitioner as it is more than likely that the funds will not be spent on the repairs to the residence. The manner in which the funds are ordered to be paid now lend themselves to the funds being dissipated and repairs not performed. The funds need to be paid directly to the person who is awarded the contract on the repairs or in some other manner so as to assure that the repairs are performed.

IV.

Additionally, Respondent owns and operates a hardware store. Because of this, Respondent

has access to certain types of building materials, some of which could be used to perform the repairs. Respondent would like to have the opportunity to provide the building materials used in the repairs, as Respondent can obtain these materials at cost. Such a provision would cause no harm or prejudice to the Petitioner, but could save the Respondent a considerable sum of money.

V.

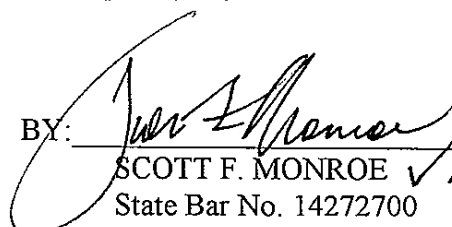
All the Respondent is trying to do is obtain fair, reasonable estimates for the work to be performed. To allow the Petitioner to obtain only one (1) estimate is to allow this situation to be manipulated so as to provide the Petitioner with the windfall of money. Respondent simply asks the Arbitrator to reconsider the manner and method of obtaining estimates and awarding the bidding process. Respondent is not complaining of the work that the Arbitrator has ordered him to perform.

WHEREFORE PREMISES CONSIDERED, Respondent respectfully prays that the Arbitrator will reconsider his position and make more appropriate orders for the repair work, the bidding process and the payment of the money.

Respectfully submitted,

POLLARD & MONROE
Attorneys at Law
951 Main Street
Kerrville, Texas 78028
Telephone: (830) 896-7500
Telecopier: (830) 257-7079

BY:


SCOTT F. MONROE ✓ H-1702
State Bar No. 14272700 m.m.
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing, Motion to Vacate Arbitration Award and/or Rehearing of Arbitration, on all parties, or their attorneys of record in compliance with Rule 21 and Rule 21a of the Texas Rules of Civil Procedure as follows:

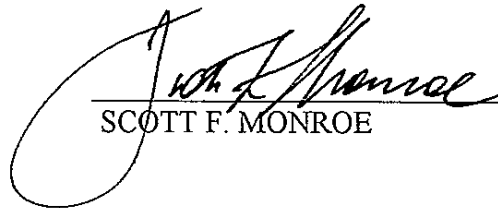
Mr. Brandon Davis
Attorney at Law
1301 McKinney, Suite 3636
Houston, Texas 77010

CMRRR #7001-0320-0002-5830-8384

Mr. Wallace T. Ferguson
Attorney at Law
302 East Blanco
Boerne, Texas 78006

CMRRR #7001-0360-0002-6127-9990

on this the 15th day of April, 2002


SCOTT F. MONROE

NO. 9284

**IN THE MATTER OF
THE MARRIAGE OF**

**AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN**

**AND IN THE INTEREST OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN
MINOR CHILDREN**

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IN THE DISTRICT COURT

216TH JUDICIAL DISTRICT

GILLESPIE COUNTY, TEXAS

ARBITRATION AWARD

On February 27, 2002, pursuant to proper notice and the agreement of the parties and their attorneys, an arbitration hearing was conducted at 110 West Hackberry, Fredericksburg, Texas. Present were Petitioner, AVIAN ANN BIEDERMANN, Respondent, KENNETH KYLE BIEDERMANN, and the Arbitrator, WALLACE T. FERGUSON, who was assisted by Gillespie County Sheriff's Deputy, Brian Vorauer. Having conducted the hearing and inspected the premises at 110 West Hackberry, Fredericksburg, Texas, and, pursuant to Chapter 171 of the *Texas Civil Practice and Remedies Code*, and Agreed Final Decree of Divorce, dated January 29, 2002, the following binding arbitration award is made:

1. Respondent, KENNETH KYLE BIEDERMANN, is awarded the following items of personal property as his sole and separate property and Petitioner, AVIAN ANN BIEDERMANN is divested of all right, title, and interest therein:
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 - C. Four (4) cassette tapes
 - D. G. Harvey print of church
 - E. Video tapes [three (3) of his choice]
 - F. Various books from front hall bookshelf:
Bill Gothard books
Medical Training Institute

Page 1

- Everyone Bible
- Quiz Mats
- Christ - McArthur
- Naval Heroes
- Peretti - Darkness
- Church Leadership (6 volumes)
- Character Sketches
- Prophet
- Book of Life set

- G. Four (4) cassette tapes from Changing Room

- H. Battery

- I. Rollers

- J. Box with hardware

- K. Router top

- L. Santa Fe bike

- M. Shelf from bed & breakfast

- N. Chess board

- O. Suburban seat

- P. Luggage carriers (2)

- Q. Rainbow vacuum

- R. Various magazines

- S. Model cars (4)

- T. Jewelry boxes (2)

- U. Clabber girl sign

- V. Bed steads (2)

- W. Green bench

- X. Wagon wheels (2)
- Y. Adirondack chairs (2)
- Z. Petitioner is Ordered to copy the parties' family videos and upon payment by Respondent for the costs of copying, deliver copies of same to Respondent within thirty (30) days of the date this Arbitration Award is signed.

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2. Respondent, KENNETH KYLE BIEDERMANN, is ORDERED to pay Petitioner, AVIAN ANN BIEDERMANN, for the following finishing-out work needed to complete the remodeling process to the residence located at 110 West Hackberry, Fredericksburg, Texas. Respondent will be responsible for payment of all labor and materials to complete the remodeling process in a good and workmanlike manner. The labor will be performed by a qualified technician or technicians skilled in the trade or craft as to each specific job required to complete the remodeling. All work is to be completed on or before 5:00 p.m. on September 2, 2002.

None of the labor described herein will be performed by Respondent, KENNETH KYLE BIEDERMANN.

Petitioner, AVIAN ANN BIEDERMANN, will obtain written cost estimates for all labor and materials needed to perform the remodeling and submit them, by certified mail, return receipt requested, to Respondent, KENNETH KYLE BIEDERMANN on or before 5:00 .m. on March 20, 2002. Unless Respondent, KENNETH KYLE BIEDERMANN, objects in writing to said estimates, via certified mail, return receipt requested, postmarked within five (5) days from the day he receives said estimates and forwarded to WALLACE T. FERGUSON, Arbitrator, Respondent, KENNETH KYLE BIEDERMANN, is Ordered to remit the total sum of said estimates to Petitioner, AVIAN ANN BIEDERMANN, on or before March 29, 2002, payable by cashier's check and mailed certified mail, return receipt requested. If timely objection is made, the Arbitrator may, but will not be required, to adjust or revise the amounts of the cost estimates.

- A. Master Bedroom: The exposed wiring hanging from the ceiling will be covered by new beaded board ceiling which will be installed and painted. Sheet rock on the walls will be completed up to the new ceiling and it will be taped and floated so as to smoothly meet existing sheet rock. The existing doorway will be framed and a new door will be installed. The room and door will be repainted.

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All disputes regarding the performance of the above notice requirements, estimates, remodeling work and the delivery or award of the personal property to Respondent, KENNETH KYLE BIEDERMANN, or other matters of whatever kind or character in connection with this arbitration and award, will be the subject of binding arbitration before this Arbitrator and all costs involved will be allotted between the parties as ordered by the Arbitrator. All arbitration costs to date are ordered paid equally to the Arbitrator by the parties.

Notices and other correspondence in this matter will all be via certified mail with copies of all such documents sent to the Arbitrator. The addresses for all notices and correspondence will be:

Avian Ann Biedermann

Page 4

110 West Hackberry
Fredericksburg, Texas 78624

Kenneth Kyle Biedermann
411 East College
Fredericksburg, Texas 78624

Wallace T. Ferguson
Attorney at Law
302 East Blanco
Boerne, Texas 78006

SIGNED on February 28, 2002.



WALLACE T. FERGUSON, Arbitrator

WALLACE T. FERGUSON
ANDREW J. HIX

Ferguson & Hix
ATTORNEYS AT LAW
P. O. BOX 1106
BOERNE, TX 78006
TELEPHONE (830) 249-9595

TELECOPIER
(830) 249-2999

Biedermann

February 28, 2002

In Reference

To:

Mediation

Professional Services

	<u>Hours</u>	
01/18/2002 Mediation	8.00	
02/11/2002 Decree; Letter to Attorneys	0.50	
02/20/2002 Letter from Scott Monroe	0.25	
02/25/2002 Letter from J. Nichols	0.25	
02/27/2002 File Review; Phone call to Attorney's office	1.75	NO CHARGE
Arbitration (12:15 p.m. - 3:30 p.m.)	3.25	
Arbitration Award - Draft #1	0.75	
02/28/2002 Arbitration Award - Draft #2	0.50	
Draft #3	0.25	
Letter to Clerk, and Attorneys	0.25	

For professional services rendered	15.75	<u>Amount</u> \$2,100.00
------------------------------------	-------	-----------------------------

Additional Charges :

	<u>Price</u>	
01/21/2002 Postage	0.34	0.34
Postage	0.34	0.34
01/22/2002 Postage	0.57	1.71
Postage	4.17	4.17
02/12/2002 Postage	0.34	0.68

Biedermann

Page 2

	<u>Price</u>	<u>Amount</u>
02/27/2002 Mileage to and from Fredericksburg - 74 miles @ .30 per mile	22.20	22.20
Total costs		<u>\$29.44</u>
Total amount of this bill		<u>\$2,129.44</u>
01/24/2002 Payment - Law Offices of John Nichols #14796 - Thank you		(\$600.00)
01/31/2002 Payment - Check #22501 - Thank you		(\$600.00)
Total payments and adjustments		<u>(\$1,200.00)</u>
Balance due		<u>\$929.44</u>

FEDERAL BUREAU OF INVESTIGATION
 DEPARTMENT OF JUSTICE
 WASHINGTON, D.C. 20535

FEB 28 2002

02-28-2002 04:15PM
 RECEIVED

WALLACE T. FERGUSON
ANDREW J. HIX

Ferguson & Hix
ATTORNEYS AT LAW
P.O. BOX 1106
BOERNE, TEXAS 78006
TELEPHONE (830) 249-9595

TELECOPIER
(830) 249-2999

May 10, 2002

Ms. Barbara Meyer
Gillespie County District Clerk
101 W. Main Street, #204
Fredericksburg TX 78624-3700

RE: No. 9284

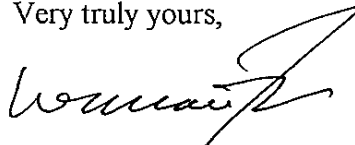
In the Matter of the Marriage of Avian Ann Biedermann and Kenneth Kyle Biedermann and In the Interest of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann, Minor Children

Dear Ms. Meyer:

I have enclosed and original and one copy of an Order on Motion to Vacate Arbitration Award and/or Rehearing of Arbitration which I request that you file in the above referenced matter and return one file-stamped copy in the enclosed envelope. *WTF 5-13-02*

Thank you for your assistance in this matter.

Very truly yours,



Wallace T. Ferguson
Attorney at Law

WTF:jes
Enclosures

xc: Mr. Scott Monroe
Mr. Brandon Davis

FILED

At 1:31 O'clock AM

MAY 13 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By [Signature] Chief Deputy

NO. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN,
MINOR CHILDREN

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IN THE DISTRICT COURT

216TH JUDICIAL DISTRICT

GILLESPIE COUNTY, TEXAS

ORDER ON MOTION TO VACATE ARBITRATION AWARD
AND/OR REHEARING OF ARBITRATION

On this the 3rd day of May, 2002, came on to be heard the Motion to Vacate Arbitration Award and/or Rehearing of Arbitration filed by KENNETH KYLE BIEDERMANN, (Kyle). Kyle and his attorney, Scott Monroe, appeared at the law office of Wallace T. Ferguson (the Arbitrator) at 302 East Blanco, Boerne, Texas. AVIAN ANN BIEDERMANN, (Avian), appeared by and through her attorney, Brandon Davis, via telephone.

The Arbitrator and the parties and their attorneys agreed that hearing on the Motion, aforesaid, would be held via teleconference. Thereafter, a hearing via teleconference was held. Having heard evidence, considered the pleadings and argument of Counsel, the Arbitrator makes the following binding arbitration award:

1. The parties have until 5:00 p.m. on May 20, 2002 to reach a settlement agreement regarding matters in dispute herein.
2. Failing mutual agreement on all matters of dispute, Kyle will submit three (3) written estimates for remodeling Avian's home. Likewise, Avian will submit two (2) written estimates therefor. Said estimates will be mailed to Arbitrator by Kyle and Avian via certified mail, return receipt requested, with copies sent to one another in the same manner.
3. The Arbitrator will make an initial ruling whereby he describes the nature, extent, details, and costs of remodeling of Avian's home. This ruling will be made by 5:00 p.m. on May 22, 2002 and notice thereof will be provided to the attorneys herein via certified mail, return receipt requested.

FILED

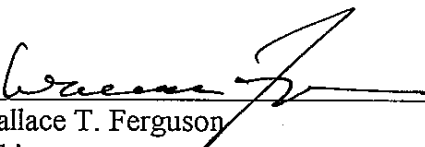
At 1:32 O'clock P.M.

MAY 13 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By *[Signature]*
Chris Deputy

4. Thereafter, both parties will have until 5:00 p.m. on May 28, 2002 to file written objections thereto and serve same upon the Arbitrator and one another via certified mail, return receipt requested. The Arbitrator may, but will not be required to, amend his initial ruling, having considered said objections.
5. Thereafter, within forty-eight (48) hours, the Arbitrator will issue a final, binding written arbitration award, serving all attorneys therewith.
6. Any monies awarded by the Arbitrator will not be made directly to the parties, but will be paid to Security State Bank, Fredericksburg, Texas, (or other agreed entity) which will act as Trustee and will disburse to the laborers or suppliers who perform the work, services, or materials necessary for remodeling Avian's home.
7. All prior Binding Arbitration Awards not in conflict with the above rulings will remain in full force and effect.

SIGNED ON May 10, 2002.



Wallace T. Ferguson
Arbitrator

APPROVED:

SCOTT MONROE
Attorney for Kyle Biedermann

BRANDON DAVIS
Attorney for Avian Biedermann

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed CERTIFIED MAIL-RETURN RECEIPT REQUESTED, to:

Mr. Brandon Davis
Attorney at Law
1301 McKinney Street, Suite 3636
Houston TX 77010

No. 7001 2510 0007 7906 3026

Mr. Scott Monroe
Attorney at Law
951 Main Street
Kerrville TX 78028

No. 7001 2510 0007 7906 3033

on this 18 day of May, 2002.



WALLACE T. FERGUSON

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF
KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN,
MINOR CHILDREN

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IN THE DISTRICT COURT

216TH JUDICIAL DISTRICT

GILLESPIE COUNTY, TEXAS

ARBITRATION AWARD

THIS AGREEMENT IS NOT SUBJECT TO REVOCATION

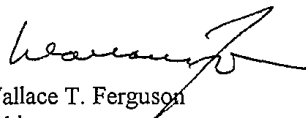
1. The proposal submitted to Avian Biedermann by JIR Construction (attached) is revised and adjusted so that the total amount awarded for this work is \$12,750.00.
2. The proposal submitted to Avian Biedermann by Terry Hamilton (attached) is revised and adjusted so that the total amount awarded for this work is \$657.00.
3. Floor covering for the project will not cost more than \$15.00 per square foot.
4. Mr. Biedermann's payments to Avian Biedermann totaling \$13,407.00 are to be postmarked no later than 5:00 pm. on April 15, 2002.
5. Mr. Biedermann will provide me with a written listing of items which he still wants to remove from Ms. Biedermann's residence as well as three (3) proposed dates after April 19, 2002,.
6. All other relief requested in Mr. Biedermanan's letter of March 22, 2002 (attached) is DENIED.
7. Previous orders have obligated Mr. Biedermann to pay \$464.72 for Arbitration charges, however his payment has not been received. Mr. Biedermann's check for \$464.22 to me is to be postmarked no later than 5:00 pm. on March 15, 2002.
8. All provisions contained in my Arbitration Award signed February 28, 2002, which are not in conflict with this Award will remain in full force and effect.

FILED
At 0 o'clock A.M.
11/23
APR 08 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer

I will defer a ruling on remaining charges until a later date.

Respectfully submitted,



Wallace T. Ferguson
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed CERTIFIED MAIL-RETURN RECEIPT REQUESTED, to:

Mr. John F. Nichols, Sr.
Attorney at Law
1301 McKinney Street, Suite 3636
Houston TX 77010

No. 7001 2510 0008 1907 0069

Mr. Scott Monroe
Attorney at Law
951 Main Street
Kerrville TX 78028

No. 7001 2510 0008 1907 0052

on this 4 day of April, 2002.


WALLACE T. FERGUSON ✓ 4-8-02 m.m.



CARBONLESS FORM 3850

PROPOSAL TRIPPLICATE

PROPOSAL

J.I.R. Construction & Remodeling
510 Lone Oak
Fredericksburg, Tx 78024
830.090.0355

No. _____
Date: _____
Sheet No. _____

Proposal Submitted To:

Name Avian Biedermaun
Street 110 W. Hackberry
City Fredericksburg State Tx
Phone 830.997.2622

Work To Be Performed At:

Street 110 W. Hackberry
City Fredericksburg State Tx
Date of Plans 3/18/02 Architect N/A

We hereby propose to furnish the materials and perform the labor necessary for the completion of

The Interior

- Removal of vinyl flooring and placement of new flooring.
- replace all necessary trim
- hang all necessary sheetrock including taping, floating, and texturing.
- hang two doors, sand, prime and paint front door.
- prime and paint (2 coats) all qualifying sheetrock and trim
- reroute exposed wires into the attic.
- replace all damaged ceiling bead board, prime and paint.
- dispose of all waste material.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings & specifications submitted for above work and completed in a substantial workmanlike manner for the sum Fourteen Thousand One hundred Sixty Six dollars & no cents. Dollars (\$ 14,100.00)
with payments to be made as follows: \$ 5000 made biweekly with remainder submitted upon the completion of above.

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, comeds and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by

Respectfully submitted

[Signature]
Per J.I.R. Construction & Remodeling

Note—This proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

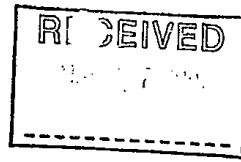
TERRY HAMILTON
 152 HAMILTON LN
 FREDERICKSBURG, TX 78624
 (630) 997-3813

1415

CUSTOMER'S ORDER NO. This is a Bid Only		DEPARTMENT			DATE 18 Mar 21	
NAME Avian Biedermann						
ADDRESS 110 W. Hackberry St						
CITY, STATE, ZIP FBG, Tx 78624						
SOLD BY		CASH	C.O.D.	CHARGE	ON ACCT.	
					MOSE RETD	
QUANTITY	DESCRIPTION				PRICE	AMOUNT
1	1) To Relocate wires & plug in					
2	the kitchen:					
3	Labor					35
4	Materials					-
5						
6	2) To Relocate the wires in the					
7	bedroom to Above the ceiling:					
8						
9	Labor					75
10						
11	3) To Correct the service wire					
12	size to the house sub-panel to					
13	stop the power surging.					
14						
15	Labor					20
16	Material					40
17						
18	4) To fix the phone wire to the					
19	Kitchen & the den.					
20	Labor & Material					4
RECEIVED BY					Total	575

5805

KEEP THIS SLIP FOR REFERENCE



Dear Wallace,

I object to the estimates submitted by Arjan Biedermann for a number of reasons.

1. I spoke with the two people who gave estimates and both told me that their bids were not limited to the requested finish out work listed in your letter.

2. There is no list of materials with which to establish quantity + quality.

3. Only one bid was submitted for electrical work and one bid for the carpentry + painting. A choice of bids should have been gotten, but to my knowledge these were the only ones.

4. I already have much of the materials necessary to complete the finish out and I would like to use them.

5. I know many qualified workmen who would like to bid on the job in order to get a fairer bid.

I have two suggestions that might make this process go more smoothly and fair to both parties.

1. Joe Poblado is the man who bid the carpentry + painting work. He said he would rather do the job by the hour instead of bidding it. I agree with this because I know what the job should cost and it gives Avian more flexibility to make changes since we are not bound by a bid. I would still be responsible for labor + materials. This arrangement would also be agreeable if Randy Stark did the job.

2. The other option is to have more bids submitted for the ~~the~~ actual work described in your letter.

I know that Avian does not know the trades people in town so it is hard to get bids in that short a period of time. ~~But~~ ~~that I could~~ I could send ~~me~~ to Avian a number of qualified people to have bids done within 2 weeks.

Also I have not heard back from you about the amount you allocated for floor covering. \$15⁰⁰ per sq. ft equates to \$135⁰⁰ per sq. yd. It should be about 2⁰⁰ per sq. ft or 18⁰⁰ per sq. yd. There are some other questions I had that would make the bidding process ~~more~~ easier. I also would like to get the ~~personal~~ personal items still at the house

Sincerely, Kyle Giedermann

Remainder
DISTRICT CLERK
CITY OF ANCHORAGE

0:00:00
MAY 10 2010

WALLACE T. FERGUSON
ANDREW J. HIX

Ferguson & Hix
ATTORNEYS AT LAW
P.O. BOX 1106
BOERNE, TEXAS 78006
TELEPHONE (830) 249-9595

TELECOPIER
(830) 249-2999

April 4, 2002

Ms. Barbara Meyer
Gillespie County District Clerk
101 W. Main Street, #204
Fredericksburg TX 78624-3700

RE: No. 9284
In the Matter of the Marriage of Avian Ann Biedermann and Kenneth Kyle Biedermann and In the Interest of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann, and Dana True Biedermann, Minor Children

Dear Ms. Meyer:

I have enclosed and original and one copy of the Arbitration Award which I request that you file in the above referenced matter and return one file-stamped copy in the enclosed envelope. ✓ 4802 m.m.

Thank you for your assistance in this matter.

Very truly yours,

Wallace T. Ferguson / 2

Wallace T. Ferguson
Attorney at Law

WTF:jes
Enclosures

xc: Mr. Scott Monroe
Mr. John Nichols, Sr.

CHITREBIS ODORALA LEXWE
ORDANICAL OFFISY
CIVIL/NOT INEARI

FILED
At 11:22 o'clock A.M.

APR 08 2002

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer
Deputy

FILED

NO. 9284-A

IN THE INTEREST OF

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§

IN THE DISTRICT COURT

KYLA RAE BIEDERMANN, EMILY
LAINE BIEDERMANN, LOREN
NOEL BIEDERMANN AND DANA
TRUE BIEDERMANN

§

216TH JUDICIAL DISTRICT

CHILDREN

§
§

GILLESPIE COUNTY, TEXAS

FIRST AMENDED PETITION TO MODIFY PARENT-CHILD RELATIONSHIP

1. *Discovery Level*

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. *Parties and Order to Be Modified*

This suit to modify a prior order is brought by KENNETH KYLE BIEDERMANN, Petitioner. Respondent is AVIAN ANNE BIEDERMANN. Petitioner is the father of the children and has standing to bring this suit. The requested modification will be in the best interest of the children.

The order to be modified is entitled Agreed Final Decree of Divorce and was rendered on January 29, 2002.

3. *Jurisdiction*

This Court has continuing, exclusive jurisdiction of this suit.

4. *Children*

The following children are the subject of this suit:

Name: KYLA RAE BIEDERMANN

Birth date: 01/26/1992

County of residence: Gillespie

FILED
At 4:00 o'clock P M

AUG 17 2004

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

[Handwritten signature]
Deputy

Name: EMILY LAINE BIEDERMANN

Birth date: 07/15/1993

County of residence: Gillespie

Name: LOREN NOEL BIEDERMANN

Birth date: 12/20/1994

County of residence: Gillespie

Name: DANA TRUE BIEDERMANN

Birth date: 03/22/1996

County of residence: Gillespie

5. *Parties Affected*

The following parties may be affected by this suit:

Name: AVIAN ANNE BIEDERMANN

Relationship: mother

Avian Anne Biedermann was served previously. No service is necessary at this time.

6. *Children's Property*

There has been no change of consequence in the status of the children's property since the prior order was rendered.

7. *Modification of Conservatorship, Possession and Access*

The conservator who has the exclusive right to designate the primary residence of the children has voluntarily relinquished the primary care and possession of the children to another person for at least six months.

Petitioner requests that he be appointed as the person who has the right to

designate the primary residency of the children.

Petitioner requests that the rights and duties of the respective conservators of the children be modified to provide as follows:

Petitioner Kenneth Kyle Biedermann shall have the following rights:

1. the exclusive right to establish the primary residence of the child within Gillespie County and counties contiguous thereto;
2. the exclusive right to consent to medical, dental, and surgical treatment involving invasive procedures and to consent to psychiatric and psychological treatment of the child subject to the right of Avian Anne Biedermann to consult with Kenneth Kyle Biedermann prior to the consent of medical, dental, and surgical treatment involving invasive procedures and to consent to psychiatric and psychological treatment of the child;
3. the exclusive right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;
4. the exclusive right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child subject to the right of Avian Anne Biedermann to consult with Kenneth Kyle Biedermann prior to the legal action or decision of substantial legal significance being made;
5. the exclusive right to consent to marriage and to enlistment in the armed forces of the United States subject to the right of Avian Anne Biedermann to consult with Kenneth Kyle Biedermann prior to the either the consent of marriage and/or enlistment in the armed forces by Kenneth Kyle Biedermann;
6. the exclusive right to make decisions concerning the child's education subject to the right of Avian Anne Biedermann to consult with Kenneth Kyle Biedermann prior to the decision regarding education being made by Kenneth Kyle Biedermann.
7. the exclusive right to the services and earnings of the children;
8. except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the exclusive right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government subject to the right of

Avian Anne Biedermann to consult with Kenneth Kyle Biedermann prior to any action being taken by Kenneth Kyle Biedermann; and

9. the exclusive duty to manage the estate of the child to the extent the estate has been created by Kenneth Kyle Biedermann.
10. the right to apply for passports for the child.

Petitioner requests that the terms and conditions for access to or possession of the children be modified to provide as follows:

Respondent, Avian Anne Biedermann be given the standard possession order as set out in Texas Family Code sections 153.311 through 153.317.

The requested modifications are in the best interest of the children.

8. *Support*

AVIAN ANNE BIEDERMANN has voluntarily relinquished the actual care, control, and possession of the children for at least six months prior to the filing of the original petition to modify filed by Petitioner. The Court is requested to modify the child support order to provide that KENNETH KYLE BIEDERMANN shall have the right to receive and give receipt for payments of support for the children and to hold or disburse money for the benefit of the children and be relieved of any duty to pay child support to Avian Anne Biedermann as previously ordered.

The requested modification is in the best interest of the children.

9. *Request for Temporary Orders*

Petitioner requests the Court, after notice and hearing, to make temporary orders for the safety and welfare of the children, including but not limited to the following:

Appointing Petitioner and Respondent temporary joint managing conservators.

Ordering Respondent to pay child support while this case is pending.

With regard to the requested temporary order for managing conservatorship, Petitioner would show the Court the following:

The children's conservator who has the exclusive right to designate the primary residence of the children has voluntarily relinquished the primary care and possession of the children for more than six months, and the requested temporary order is in the children's best interest.

10. Request for Attorney's Fees, Expenses, Costs, and Interest

It was necessary for Petitioner to secure the services of J. Ken Nunley, NUNLEY, DAVIS, JOLLEY & HILL, L.L.P, a licensed attorney, to preserve and protect the children's rights. If the parties are unable to reach an agreement on all issues, Respondent should be ordered to pay reasonable attorney's fees, expenses, and costs through trial and appeal, and a judgment should be rendered in favor of this attorney and against Respondent; or, in the alternative, Petitioner requests that reasonable attorney's fees, expenses, and costs through trial and appeal be taxed as costs and be ordered paid directly to Petitioner's attorney, who may enforce the order in the attorney's own name. Petitioner requests postjudgment interest as allowed by law.

11. Prayer

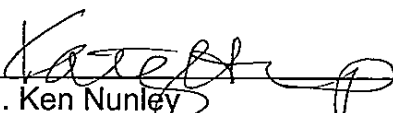
Petitioner prays that citation and notice issue as required by law and that the Court enter its orders in accordance with the allegations contained in this petition.

Petitioner prays for attorney's fees, expenses, costs, and interest as requested above.

Petitioner prays for general relief.

Respectfully submitted,


NUNLEY, DAVIS, JOLLEY, & HILL, L.L.P.
1580 South Main Street, Suite 200
Boerne, TX 78006
Tel: (830) 816-3333
Fax: (830) 816-3388

By: 

J. Ken Nunley
State Bar No. 15135600
Kathy H. Waldrop
State Bar No. 20686250
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing First Amended Petition to Modify Prior Order was delivered in accordance to the Rules of Civil Procedure to Avian Anne Biedermann on the 17th day of August, 2004.



J. Ken Nunley
Kathy H. Waldrop

FILED
At 4:01 O'clock P M

NO. 9284-A

AUG 17 2004

IN THE INTEREST OF

KYLA RAE BIEDERMANN, EMILY
LAINE BIEDERMANN, LOREN
NOEL BIEDERMANN AND DANA
TRUE BIEDERMANN

CHILDREN

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IN THE DISTRICT COURT

216TH JUDICIAL DISTRICT

GILLESPIE COUNTY, TEXAS

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Signature]
Deputy

AFFIDAVIT OF KENNETH KYLE BIEDERMANN

Kenneth Kyle Biedermann appeared in person before me today and stated under oath:

"My name is Kenneth Kyle Biedermann. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am the Petitioner in this case.

"Divorce was granted on January 29, 2002.

"Avian Anne Biedermann is the joint managing conservator with the exclusive right to establish the primary residence of the children and her address is 110 W. Hackberry, Fredericksburg, Texas.

"Petitioner resides at 208 E. Schubert, Fredericksburg, Texas.

"At all times in the last five years, the children have resided between the two Fredericksburg addresses.

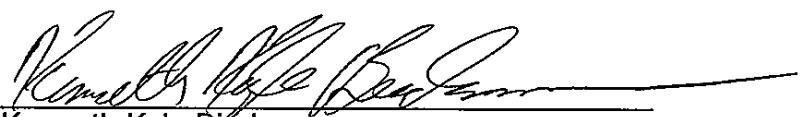
"Since the time of the divorce Avian Anne Biedermann has voluntarily relinquished possession of the children by permitting the children to spend more than fifty percent of the time with Petitioner. Petitioner, until the filing of this action and service of citation on Avian Anne Biedermann, had to insist that the children return to their mother and spend time with her. Avian Anne Biedermann made no demands that the children return to her home.

"Even when the children are in the possession of Avian Ann Biedermann, the children call Petitioner and ask for him to provide their meals and to take them to school.

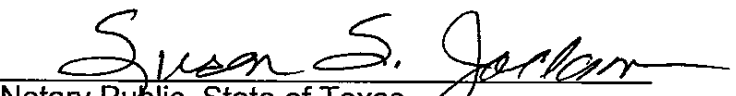
"I have not participated, as a party or as a witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the children in Texas or any other state.

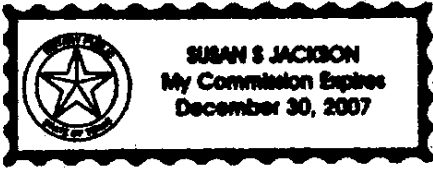
"I do not know of any proceeding that could affect this proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions.

"I do not know of any person not a party to this proceeding who has physical custody of the children or claims rights of legal custody or physical custody of, or visitation with, the children."


Kenneth Kyle Biedermann

SIGNED under oath before me on August 16, 2004.


Notary Public, State of Texas



NUNLEY, DAVIS, JOLLEY
& HILL, L.L.P.

Andrew J. Aelvoet
Cecil W. (Tres) Bain, III
Grace S. Bellomy
Bill D. Blanton **
Douglas G. Burford****
J. Christopher Byrd
Jonathan B. Cluck
Joe M. Davis *
James M. Hill, Jr.***
Grady B. Jolley***
J. Ken Nunley*
Kelly P. Rogers
Chad M. Upham
Kathy Hyatt Waldrop

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
1580 South Main Street, Suite 200
Boerne, Texas 78006-3308
Phone (830) 816-3333
Fax (830) 816-3388
e-mail: info@ndjh.com
www.texastriallaw.com
Offices Also in Hondo, Texas

Of Counsel:
William A. Brant

*Board Certified
Civil Trial Law

** Board Certified
Personal Injury Trial Law

***Member of the College
of the State Bar of Texas

****Also licensed in California

August 17, 2004

Gillespie County Courthouse
District Clerk, Barbara Meyer
101 West Main Street, Room 204
Fredericksburg, Texas 78624

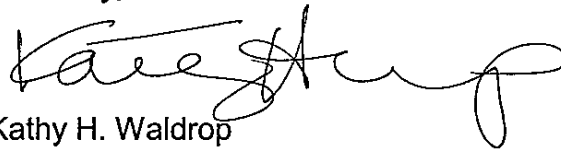
RE: Cause No. 9284-A, *In the Interest of Kyla Rae Biedermann, Emily Laine Biedermann, Loren Noel Biedermann and Dana True Biedermann, Minor Children;*
In the 216th Judicial District Court of Gillespie County, Texas.

Dear Clerk:

This letter is to request that you release the above referenced file to Kenneth Kyle Biedermann for a hearing that is set for 9:00 a.m. on August 18, 2004 at the Kerr County Courthouse in front of Judge Ables.

Thank you for your assistance. Please call if you have any questions.

Sincerely,



Kathy H. Waldrop

/cg

I:\CLIENT\2100\2155.1 Kenneth Biedermann\CORRESPONDENCE\Clerk ltr 1.wpd

FILED
At 4:02 O'clock P.M.

AUG 17 2004

DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
[Handwritten signature]
Deputy

NO. 9284-A

IN THE INTEREST OF

**KYLA RAE BIEDERMANN, EMILY
LAINE BIEDERMANN, LOREN
NOEL BIEDERMANN AND DANA
TRUE BIEDERMANN**

CHILDREN

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IN THE DISTRICT COURT

216TH JUDICIAL DISTRICT

GILLESPIE COUNTY, TEXAS

ORDER ON FIRST AMENDED MOTION TO COMPEL DISCOVERY

On January 17, 2008, the Court considered the First Amended Motion to Compel Discovery of Kenneth Kyle Biedermann.

1. Calvin C. Ote, Attorney for Petitioner, is ORDERED to amend his Responses to Respondent's Request for Production and Inspection to comply with Texas Rules of Civil Procedure 193.1. Specifically, Mr. Ote shall amend his answers such that his responses are preceded by the request to which they reply no later than 10 days or Monday, January 28, 2008.
2. Avalon Ann Biedermann is ORDERED to produce documents outlined in Request 14 as "All residence, business, and wireless telephone records of the parties", for the time period of January 2006 to present in the offices of The Parker Law Firm within 30 days or Friday, February 16, 2008. For such records covered by this request that are not in possession of Ms. Biedermann, she shall execute the attached release allowing release of said records to The Parker Law Firm. Release attached as Exhibit "A".
3. Calvin C. Ote, Attorney for Petitioner, is ORDERED to amend his Responses to Respondent's Request for Production and Inspection to comply with Texas Rules

FILED
At 11:42 O'clock AM

JAN 28 2008

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

*By Jan Davis
Chief Deputy*

of Civil Procedure 196.3(c). Specifically, Mr. Utte shall organize and label his responses to correspond with the categories in the requests no later than 30 days or Friday, February, 16, 2008.

4.

SIGNED on

1/24/08

JUDGE PRESIDING

APPROVED AS TO FORM AND CONTENT:

Eric S. Parker
Attorney for Petitioner
Kyle Biedermann

Copy
J.D. 1-29-08

Calvin C. One
Attorney for Respondent
Avian Biedermann

Copy J.D. 1-28-08

JAN 5 8 50 AM

9284-A

BRENTWOOD OAKS APARTMENTS
604 S.EAGLE STREET

FREDERICKSBURG, TEXAS 78624

OFFICE: 830-990-0296

FAX: 830-990-4930

EMAIL: linda.butt@simpsonhousing.com

RECEIVED
2-20-08
@ 4:00 PM

facsimile transmittal

To: Gillespie County Courthouse Fax: 830-992-2613

District Clerk

From: Linda Cole Date: 02/6/2008

Re: Avian Biedermann Pages: 3

CC:

Urgent For Review Please Comment Please Reply Please Recycle

This person is trying to qualify for an apartment here on the Affordable Housing program. Please fill in all information pertaining to her child support, alimony or any other payments that come through your facility. Please sign it and fax back to Linda Cole at 830-990-4930 no later than, Thursday, February 21, 2008. I thank you in advance for your cooperation in this matter.

TENANT RELEASE AND CONSENT

I/We Avian A. Biedermann the undersigned hereby authorize all persons or companies in the categories listed below to release information regarding employment, income and/or assets for purposes of verifying information on my/our apartment rental application. I/we authorize release of information without liability to the owner/ manager of the apartment community listed below, and/or the Texas Department of Housing and Community Affairs.

INFORMATION COVERED

I/We understand that previous or current information regarding me/us may be needed. Verifications and inquiries that may be requested include, but are not limited to: personal identity, student status, employment, income, assets, medical or child care allowances. I/We understand that this authorization cannot be used to obtain information about me/us that is not pertinent to my eligibility for and continued participation as a Qualified Tenant.

GROUPS OR INDIVIDUALS THAT MAY BE ASKED

The groups or individuals that may be asked to release the above information include, but are not limited to:

- | | | |
|--|--|----------------------------------|
| Past and Present Employers | Welfare Agencies | Veterans Administrations |
| Support and Alimony Providers | State Unemployment Agencies | Retirement Systems |
| Educational Institutions | Social Security Administration | Medical and Child Care Providers |
| Banks and other Financial Institutions | Previous Landlords (including Public Housing Agencies) | |

CONDITIONS

I/We agree that a photocopy of this authorization may be used for the purposes stated above. The original of this authorization is on file and will stay in effect for a year and one month from the date signed. I/We understand I/We have a right to review this file and correct any information that is incorrect.

SIGNATURES

<u>Avian A. Biedermann</u> Applicant/Resident	<u>Avian A. Biedermann</u> (Print Name)	<u>Feb 15, 08</u> Date
--	--	---------------------------

_____ Co/Applicant/Resident	_____ (Print Name)	_____ Date
--------------------------------	-----------------------	---------------

_____ Adult Member	_____ (Print Name)	_____ Date
-----------------------	-----------------------	---------------

_____ Adult Member	_____ (Print Name)	_____ Date
-----------------------	-----------------------	---------------

<u>BRENTWOOD OAKS APTS</u> Apartment Name	<u>LINDA COLE</u> Contact	<u>830-990-0296</u> Phone
--	------------------------------	------------------------------

NOTE: THIS GENERAL CONSENT MAY NOT BE USED TO REQUEST A COPY OF A TAX RETURN. IF A COPY OF A TAX RETURN IS NEEDED, IRS FORM 4506, "REQUEST FOR COPY OF A TAX FORM" MUST BE PREPARED AND SIGNED SEPARATELY.

Revised 2-10-99



Child/Spousal Support Verification

Form: 7025-1

Source's Mailing Address: Gillespie County Courthouse Phone #: (830) 997-6517
101 W. Main, Robson 204 Fax #: (830) 992-2613
Hog, Tx 78624 Attn: Barbara Meyer
 Recipient: AVIAN A. BIEDERMAN

The recipient named above has applied for an apartment governed by the federal government's Housing Credit Program. We must verify all income and asset sources of this person and their household to determine eligibility. Please complete the following information and return as soon as possible in the envelope provided.

Your assistance in completing this form accurately and timely is greatly appreciated!

Applicant/Resident Release Statement:

Applicant/Resident Name: Avian A. Biederman

I hereby authorize the release of the following information in order to determine my eligibility for the Housing Credit Program. Please complete this form in full and return it to the MANAGEMENT COMPANY at your earliest convenience.

Signature: Avian A. Biederman Social Security #: 451-37-2290

Please complete the following. If the monies are based on a percentage of the payor's income, please indicate the average amount per period.

Type of Benefit	Amount	Frequency
<input checked="" type="checkbox"/> Child Support	<u>\$600.00</u>	<u>Twice a month</u>
<input type="checkbox"/> Alimony	_____	_____
<input type="checkbox"/> Other	_____	_____

(Please list type)

Are monies paid to offset an AFDC grant? Yes No NA

Do you anticipate any changes in the next 12 months Yes No Don't know

Comments: _____

Signature of Source: Barbara Meyer Title: District Clerk
 Date Completed Form: Feb. 21, 2008 Phone #: 830-997-6517

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

Return Form To:	BRENTWOOD OAKS APARTMENTS 604 South Eagle Fredericksburg, Tx. 78624 830-990-4930 (FAX)	Date Received:
-----------------	--	----------------

Revision - 12/10/01

TEXAS
DEPARTMENT OF PUBLIC SAFETY
DRIVER LICENSE

CLASS: C DL: 00705712
DOB: 05-13-61 HT: 4-11
EXPIRES: 05-13-09 EYES: GRN
REST: SEX: F
END:

BIEDERMANN, AVIAN ANNE
110 W HACKBERRY
FREDERICKSBURG TX 78624

Avian Biedermann

03132007201



Cause # 9284

As of March 1, 08 I have
moved to 604 S Eagle St apt
510, Aug Tx 78624.

Ann L. Biederman
March 18, 08

FILED
At <u>1:21</u> O'clock <u>P.</u> M
MAR 18 2008
<small>BARBARA BIEDERMAN DISTRICT CLERK GILLESPIE COUNTY, TEXAS</small>

by [Signature]



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

Child Support Enforcement Unit 208
1901 Garner Field Road
Uvalde, Texas 78801
(830) 591-2100

GILLESPIE COUNTY

Date Requested: 03/11/09
OAG Child Support Case No. 001175484Z
Non-Custodial Parent: BIEDERMANN, KENNETH & AVIAN
Cause No./CASE - # 9284
Approximate Date: 01/29/02

PLEASE RETURN THIS FORM LETTER WITH DOCUMENT(S) REQUESTED

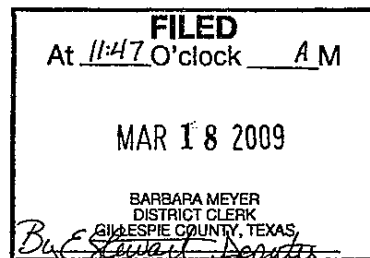
Our office needs the following document(s) for: **Needed for completion of case.**

- Divorce Decree and all subsequent orders
- Order with the following date(s): _____, _____, _____
- Latest order on file
- Record of child support payments from start to present.
- Record of child support payments since _____.
- If Divorce is in progress, copy of Original Petition
- Other: ALL PAYMENT RECORDS

Thank you in advance for your prompt response to our request. Your assistance in providing us with the requested document(s) contribute towards exemplary customer services.

Respectfully,
DALIA E COLEMAN
Child Support Officer

FORWARD TO NORMA ROBLES.OR MELYNDA COLLINS



Records Mailed 03/26/09 ebs



DISTRICT CLERKS:

BANDERA COUNTY - TAMMY KNEUPER
830/796-4606
GILLESPIE COUNTY - BARBARA MEYER
830/997-6517
KENDALL COUNTY - SHIRLEY STEHLING
830/249-9343
KERR COUNTY - LINDA UECKER
830/792-2281

STEPHEN B. ABLES
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

COURT COORDINATOR: BECKY I. HENDERSON
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028
830/792-2290

COURT REPORTER: CINDY E. SNIDER
P. O. BOX 33251
KERRVILLE, TEXAS 78029-3251
830/257-5063

September 4, 2001

Hon. Barbara Meyer
Gillespie County District Clerk
101 W. Main, Room 204
Fredericksburg, TX 78624

Re: Cause No. 9284
In the Matter of the Marriage of BIEDERMANN

Dear Barbara:

Enclosed are a Motion and Order in the above-referenced matter. Please file the originals and send copies of the Order to all appropriate parties.

Very truly yours,

A handwritten signature in cursive script that reads "Stephen B. Ables".

Stephen B. Ables
216th District Judge

SBA:mfb
Enclosures

BY THE CLERK OF THE COURT
GILLESPIE COUNTY, TEXAS
SEP 07 2001

FILED
At 11:42 O'clock A.M.

SEP 07 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By: [Signature]
Deputy

No. 9284

IN THE MATTER OF
THE MARRIAGE OF

AVIAN ANN BIEDERMANN
AND
KENNETH KYLE BIEDERMANN

AND IN THE INTEREST OF

KYLA RAE BIEDERMANN,
EMILY LAINE BIEDERMANN,
LOREN NOEL BIEDERMANN, AND
DANA TRUE BIEDERMANN, MINOR
CHILDREN

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IN THE DISTRICT COURT

OF GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

ORDER OF SUBSTITUTION OF COUNSEL

IT IS HEREBY ORDERED that Scott F. Monroe, of the lawfirm of Pollard & Monroe, 951 Main Street, Kerrville, Kerr County, Texas, be and hereby is substituted in as the Attorney of Record for the Respondent in the above styled and numbered cause.

SIGNED this the 4 day of Sept., 2001.



JUDGE PRESIDING

cc:

~~Scott F. Monroe~~

~~Patricia K. Bergman~~

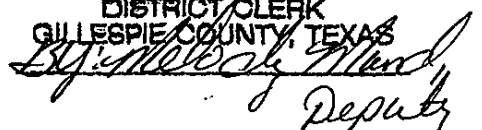
~~Rita R. Gierke~~
~~Rita R. Gierke~~
~~EVERETT WEAVER~~

SEP 03 2001

SEP 03 2001
10:00 CLOCK
FILED

FILED
At 11:30 clock A.M.

SEP 07 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Deputy

POLLARD & MONROE

ATTORNEYS AT LAW

951 MAIN STREET
KERRVILLE, TEXAS 78028

TELEPHONE: (830) 896-7500

TELECOPIER: (830) 257-7079

E-MAIL: tpollard@ktc.com

E-MAIL: smonroe@ktc.com

L. W. POLLARD (1902-1981)

THOMAS W. POLLARD

SCOTT F. MONROE

September 7, 2001

Ms. Barbara Meyer
District Clerk
Gillespie County Courthouse, Ste. 204
101 W. Main Street
Fredericksburg, Texas 78624-3700

RE: Cause No. 9284; In the Matter of the
Marriage of Avian Ann Biedermann and Kenneth
Kyle Biedermann and In the Interest of Kyla Rae
Biedermann, Emily Laine Biedermann, Loren
Noel Biedermann and Dana True Biedermann,
Minor Children; In the District Court of Gillespie
County, Texas, 216th Judicial District

Dear Ms. Meyer:

Enclosed herewith please find an Original and one (1) copy of Motion for Further
Temporary Orders and Motion to Compel Production of Discoverable Material in connection
with the above entitled and numbered cause.

Will you please file the Motions and return a file marked copy to our office in the
enclosed self addressed, stamped envelope. ✓ 9-12-01 m.m.

Thank you very much for your assistance in this regard.

Yours very truly,

Stephanie C. Parker

Stephanie C. Parker, Assistant to Scott F. Monroe

enc.

:scp

ENCLOSURE COPY
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS

Ms. Pamela K. Bergman CMRRR # 7001 0320 0001 8968 2409

Mr. Kurtis S. Rudkin CMRRR # 7001 0320 0001 8968 2386

FILED
At 11:30 O'clock A.M.

SEP 10 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
Barbara Meyer

0.0100X
LATE



COPY

CAUSE NO. 9284

11:28 FILED
At _____ O'clock AM

JUN 25 2012

IN THE DISTRICT COURT
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
by [Signature]

IN THE INTEREST OF

LOREN NOEL BIEDERMANN and
DANA TRUE BIEDERMANN

CHILDREN

§
§
§
§
§
§

IN THE DISTRICT COURT
216TH JUDICIAL DISTRICT

GILLESPIE COUNTY, TEXAS

Order in Suit to Modify Parent-Child Relationship

On May 21, 2012 the Court considered this case.

Appearances

Petitioner, KENNETH KYLE BIEDERMANN, appeared in person and through attorney of record, Cheryl Crenwelge Sione, and announced ready for trial.

Respondent, AVIAN ANN BIEDERMANN, has made a general appearance and has agreed to the terms of this order, to the extent permitted by law, as evidenced by Respondent's signature below.

Jurisdiction

The Court, after examining the record and the evidence and argument of counsel, finds that it has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive jurisdiction of this case. All persons entitled to citation were properly cited.

Jury

A jury was waived, and all questions of fact and of law were submitted to the Court

Record

The making of a record of testimony was waived by the parties with the consent of the Court.

[Signature]
KKB

[Signature]
AAB

Child

The Court finds that the following children are the subject of this suit:

Name: LOREN NOEL BIEDERMANN
Sex: Female
Birth date: December 20, 1994
Home state: Texas
Social Security number: xxx-xx-9258
Driver's license number and issuing state: _____

Name: DANA TRUE BIEDERMANN
Sex: Female
Birth date: March 22, 1996
Home state: Texas
Social Security number: xxx-xx-8790
Driver's license number and issuing state: n/a

Findings

The Court finds that the material allegations in the petition to modify are true and that the requested modification is in the best interest of the children. IT IS ORDERED that the requested modification is GRANTED.

Parenting Plan

The Court finds that the provisions in these orders relating to the rights and duties of the parties with relation to the children, possession of and access to the children, child support, and optimizing the development of a close and continuing relationship between each party and the children constitute the parties' agreed parenting plan.

Conservatorship

The Court finds that the following orders are in the best interest of the children.

IT IS ORDERED that KENNETH KYLE BIEDERMANN and AVIAN ANNE BIEDERMANN are continued as Joint Managing Conservators of the following children:


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LOREN NOEL BIEDERMANN and DANA TRUE BIEDERMANN.

IT IS ORDERED that, at all times, KENNETH KYLE BIEDERMANN and AVIAN ANN BIEDERMANN, as parent joint managing conservators, shall each have the following rights:

1. the right to receive information from any other conservator of the children concerning the health, education, and welfare of the children;
2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the children;
3. the right of access to medical, dental, psychological, and educational records of the children;
4. the right to consult with a physician, dentist, or psychologist of the children;
5. the right to consult with school officials concerning the children's welfare and educational status, including school activities;
6. the right to attend school activities;
7. the right to be designated on the children's records as a person to be notified in case of an emergency;
8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children; and
9. the right to manage the estates of the children to the extent the estates have been created by the parent or the parent's family.

IT IS ORDERED that, at all times, KENNETH KYLE BIEDERMANN and AVIAN ANN BIEDERMANN, as parent joint managing conservators, shall each have the following duties:

1. the duty to inform the other conservator of the children in a timely manner of significant information concerning the health, education, and welfare of the children; and
2. the duty to inform the other conservator of the children if the conservator resides


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with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that this information shall be tendered in the form of a notice made as soon as practicable, but not later than the fortieth day after the date the conservator of the children begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

IT IS ORDERED that, during their respective periods of possession, KENNETH KYLE BIEDERMANN and AVIAN ANN BIEDERMANN, as parent joint managing conservators, shall each have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the children;
2. the duty to support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
3. the right to consent for the children to medical and dental care not involving an invasive procedure; and
4. the right to direct the moral and religious training of the children.

IT IS ORDERED that KENNETH KYLE BIEDERMANN, as a parent joint managing conservator, shall have the following rights and duty:

1. the exclusive right to designate the primary residence of the child, LOREN NOEL BIEDERMANN;
2. the independent right to consent to medical, dental, and surgical treatment involving invasive procedures;
3. the independent right to consent to psychiatric and psychological treatment of the children;
4. the independent right to represent the children in legal action and to make other


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decisions of substantial legal significance concerning the children;

5. the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States;

6. the independent right to make decisions concerning the children's education;

7. except as provided by section 264.0111 of the Texas Family Code, the independent right to the services and earnings of the children;

8. except when a guardian of the children's estates or a guardian or attorney ad litem has been appointed for the children, the independent right to act as an agent of the children in relation to the children's estates if the children's action is required by a state, the United States, or a foreign government; and

10. the independent duty to manage the estates of the children to the extent the estates have been created by community property or the joint property of the parents.

IT IS ORDERED that AVIAN ANN BIEDERMANN, as a parent joint managing conservator, shall have the following rights and duty:

1. the exclusive right to designate the primary residence of the child, DANA TRUE BIEDERMANN;

2. the independent right to consent to medical, dental, and surgical treatment involving invasive procedures;

3. the independent right to consent to psychiatric and psychological treatment of the children;

4. the exclusive right to receive and give receipt for periodic payments for the support of the children and to hold or disburse these funds for the benefit of the children;

5. the independent right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children;

6. the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States;

7. the independent right to make decisions concerning the children's education;

8. except as provided by section 264.0111 of the Texas Family Code, the independent right to the services and earnings of the children;


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9. except when a guardian of the children's estates or a guardian or attorney ad litem has been appointed for the children, the independent right to act as an agent of the children in relation to the children's estates if the children's action is required by a state, the United States, or a foreign government; and

10. the independent duty to manage the estates of the children to the extent the estates have been created by community property or the joint property of the parents.

Possession Order

The Court finds that the parties have agreed and that good cause exists to deviate from the requirements of Chapter 153 of the Texas Family Code. IT IS THEREFORE ORDERED :

A. Mutual Agreement or Specified Terms for Possession.

IT IS ORDERED that Father shall have possession of the child, DANA TRUE BIEDERMANN, at any and all times mutually agreed to in advance by the parties, and the child.

IT IS ORDERED that Mother shall have possession of the child, LOREN NOEL BIEDERMANN, at any and all times mutually agreed to in advance by the parties, and the child.

The Court further finds, given the circumstances of the parties and the age and desires of the child, that more specific orders are unnecessary and unworkable at this time.

Either party may apply for a more specific possession order in the event such is necessary.

The periods of possession ordered above apply to each child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

Child Support

IT IS ORDERED that KENNETH KYLE BIEDERMANN is obligated to pay and shall pay to AVIAN ANN BIEDERMANN child support of Three Hundred and no/100 dollars (\$300.00) per month, with the first payment being due and payable on June 1, 2012 and a like


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payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

1. LOREN NOEL BIEDERMANN reaches the age of eighteen years or graduates from high school, whichever occurs later, subject to the provisions for support beyond the age of eighteen years set out below;
2. LOREN NOEL BIEDERMANN marries;
3. LOREN NOEL BIEDERMANN dies;
4. LOREN NOEL BIEDERMANN enlists in the armed forces of the United States and begins active service as defined by section 101 of title 10 of the United States Code; or
5. LOREN NOEL BIEDERMANN's disabilities are otherwise removed for general purposes.

Thereafter, KENNETH KYLE BIEDERMANN is ORDERED to pay to AVIAN ANN BIEDERMANN child support of Four Hundred Sixty Nine and no/100 dollars (\$469.00) per month, due and payable on the 1st day of the first month immediately following the date of the earliest occurrence of one of the events specified above and a like sum of Four Hundred Sixty Nine and no/100 dollars (\$469.00) due and payable on the 1st day of each month thereafter until the next occurrence of one of the events specified above for DANA TRUE BIEDERMANN.

If a child is eighteen years of age and has not graduated from high school, IT IS ORDERED that KENNETH KYLE BIEDERMANN's obligation to pay child support to AVIAN ANN BIEDERMANN shall not terminate but shall continue for as long as the child is enrolled—

1. under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma or under section 130.008 of the Education Code in courses for joint high school and junior college credit and is complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code or

2. on a full-time basis in a private secondary school in a program leading toward a


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high school diploma and is complying with the minimum attendance requirements imposed by that school.

IT IS ORDERED that any employer of KENNETH KYLE BIEDERMANN shall be ordered to withhold from earnings for child support from the disposable earnings of KENNETH KYLE BIEDERMANN for the support of DANA TRUE BIEDERMANN.

IT IS FURTHER ORDERED that all amounts withheld from the disposable earnings of KENNETH KYLE BIEDERMANN by the employer and paid in accordance with the order to that employer shall constitute a credit against the child support obligation. Payment of the full amount of child support ordered paid by this order through the means of withholding from earnings shall discharge the child support obligation. If the amount withheld from earnings and credited against the child support obligation is less than 100 percent of the amount ordered to be paid by this order, the balance due remains an obligation of KENNETH KYLE BIEDERMANN, and it is hereby ORDERED that KENNETH KYLE BIEDERMANN pay the balance due directly to the state disbursement unit as specified below.

On this date the Court signed and authorized the issuance of an Order/Notice to Withhold Income for Child Support.

IT IS ORDERED that all payments shall be made through the state disbursement unit at Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to AVIAN ANN BIEDERMANN for the support of the children.

IT IS FURTHER ORDERED that KENNETH KYLE BIEDERMANN shall notify this Court and AVIAN ANN BIEDERMANN by U.S. certified mail, return receipt requested, of any change of address and of any termination of employment. This notice shall be given no later than


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seven days after the change of address or the termination of employment. This notice or a subsequent notice shall also provide the current address of KENNETH KYLE BIEDERMANN and the name and address of his current employer, whenever that information becomes available.

IT IS ORDERED that, on the request of a prosecuting attorney, the title IV-D agency, the friend of the Court, a domestic relations office, AVIAN ANN BIEDERMANN, KENNETH KYLE BIEDERMANN, or an attorney representing AVIAN ANN BIEDERMANN or KENNETH KYLE BIEDERMANN, the clerk of this Court shall cause a certified copy of the Order/Notice to Withhold Income for Child Support to be delivered to any employer.


IT IS ORDERED that each party shall pay, when due, all fees charged to that party by the state disbursement unit and any other agency statutorily authorized to charge a fee.

Medical Support

IT IS ORDERED that KENNETH KYLE BIEDERMANN and AVIAN ANN BIEDERMANN shall each provide medical support for each child as set out in this order as additional child support for as long as the Court may order KENNETH KYLE BIEDERMANN and AVIAN ANN BIEDERMANN to provide support for the child under sections 154.001 and 154.002 of the Texas Family Code. Beginning on the day KENNETH KYLE BIEDERMANN and AVIAN ANN BIEDERMANN's actual or potential obligation to support a child under sections 154.001 and 154.002 of the Family Code terminates, IT IS ORDERED that KENNETH KYLE BIEDERMANN and AVIAN ANN BIEDERMANN are discharged from the obligations set forth in this medical support order with respect to that child, except for any failure by a parent to fully comply with those obligations before that date.

1. Definitions—


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“Health insurance” means insurance coverage that provides basic health-care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services, that may be provided through a health maintenance organization or other private or public organization, other than medical assistance under chapter 32 of the Texas Human Resources Code.


“Reasonable cost” means the cost of health insurance coverage for a child that does not exceed 9 percent of KENNETH KYLE BIEDERMANN’s annual resources, as described by section 154.062(b) of the Texas Family Code. described by section 154.062(b) of the Texas Family Code.

“Reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of a child” include, without limitation, any copayments for office visits or prescription drugs, the yearly deductible, if any, and medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges. These reasonable and necessary health-care expenses do not include expenses for travel to and from the health-care provider or for nonprescription medication.

“Furnish” means:

- a. to hand deliver the document by a person eighteen years of age or older either to the recipient or to a person who is eighteen years of age or older and permanently resides with the recipient;
- b. to deliver the document to the recipient by certified mail, return receipt requested, to the recipient’s last known mailing or residence address; or
- c. to deliver the document to the recipient at the recipient’s last known mailing or residence address using any person or entity whose principal business is that of a courier or deliverer of papers or documents either within or outside the United States.


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2. Findings on Health Insurance Availability—Having considered the cost, accessibility, and quality of health insurance coverage available to the parties, the Court finds:

Health insurance is available to KENNETH KYLE BIEDERMANN at a reasonable cost.

IT IS FURTHER FOUND that the following orders regarding health-care coverage are in the best interest of the children.

3. Provision of Health-Care Coverage—

As additional child support, KENNETH KYLE BIEDERMANN is ORDERED to continue to maintain health insurance for each child who is the subject of this suit that covers basic health-care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services.

KENNETH KYLE BIEDERMANN is ORDERED to maintain such health insurance in full force and effect on each child who is the subject of this suit as long as child support is payable for that child. KENNETH KYLE BIEDERMANN is ORDERED to convert any group insurance to individual coverage or obtain other health insurance for each child within fifteen days of termination of his employment or other disqualification from the group insurance. KENNETH KYLE BIEDERMANN is ORDERED to exercise any conversion options or acquisition of new health insurance in such a manner that the resulting insurance equals or exceeds that in effect immediately before the change.

KENNETH KYLE BIEDERMANN is ORDERED to furnish AVIAN ANN BIEDERMANN a true and correct copy of the health insurance policy or certification and a schedule of benefits within fifteen days of the signing of this order unless it has previously been provided. KENNETH KYLE BIEDERMANN is ORDERED to furnish AVIAN ANN


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BIEDERMANN the insurance cards and any other forms necessary for use of the insurance within fifteen days of the signing of this order unless previously provided. KENNETH KYLE BIEDERMANN is ORDERED to provide, within three days of receipt by him, to AVIAN ANN BIEDERMANN any insurance checks, other payments, or explanations of benefits relating to any medical expenses for the children that AVIAN ANN BIEDERMANN paid or incurred.

Pursuant to section 1504.051 of the Texas Insurance Code, IT IS ORDERED that if KENNETH KYLE BIEDERMANN is eligible for dependent health coverage but fails to apply to obtain coverage for the children, the insurer shall enroll the children on application of AVIAN ANN BIEDERMANN or others as authorized by law.

Pursuant to section 154.183(c) of the Texas Family Code, the reasonable and necessary health-care expenses of the children that are not reimbursed by health insurance are allocated as follows: AVIAN ANN BIEDERMANN is ORDERED to pay fifty (50%) percent and KENNETH KYLE BIEDERMANN is ORDERED to pay fifty (50%) percent of the unreimbursed health-care expenses if, at the time the expenses are incurred, KENNETH KYLE BIEDERMANN is providing health insurance as ordered.

The party who incurs a health-care expense on behalf of a child is ORDERED to submit to the other party all forms, receipts, bills, statements, and explanations of benefits reflecting the uninsured portion of the health-care expenses within thirty days after he or she receives them. The nonincurring party is ORDERED to pay his or her percentage of the uninsured portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the incurring party for any advance payment exceeding the incurring party's percentage of the uninsured portion of the health-care expenses within thirty days after the nonincurring party


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receives the forms, receipts, bills, statements, and explanations of benefits.

These provisions apply to all unreimbursed health-care expenses of [the/any] child who is the subject of this suit that are incurred while child support is payable for [the/that] child.

4. Secondary Coverage—IT IS ORDERED that if a party provides secondary health insurance coverage for the children, both parties shall cooperate fully with regard to the handling and filing of claims with the insurance carrier providing the coverage in order to maximize the benefits available to the children and to ensure that the party who pays for health-care expenses for the children is reimbursed for the payment from both carriers to the fullest extent possible.

5. Compliance with Insurance Company Requirements—Each party is ORDERED to conform to all requirements imposed by the terms and conditions of any policy of health insurance covering the children in order to assure maximum reimbursement or direct payment by any insurance company of the incurred health-care expense, including but not limited to requirements for advance notice to any carrier, second opinions, and the like. Each party is ORDERED to attempt to use “preferred providers,” or services within the health maintenance organization, if applicable; however, this provision shall not apply if emergency care is required. Disallowance of the bill by a health insurer shall not excuse the obligation of either party to make payment; however, if a bill is disallowed or the benefit reduced because of the failure of a party to follow insurance procedures or requirements, IT IS ORDERED that the party failing to follow the insurance procedures or requirements shall be wholly responsible for the increased portion of that bill.

IT IS FURTHER ORDERED that no surgical procedure, other than in an emergency or one covered by insurance, shall be performed on the child unless the parent consenting to surgery


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has first consulted with at least two medical doctors, both of whom state an opinion that the surgery is medically necessary. IT IS FURTHER ORDERED that a parent who fails to obtain the required medical opinions before consent to surgery on the child shall be wholly responsible for all medical and hospital expenses incurred in connection therewith and not covered by insurance.

6. Claims—Except as provided in this paragraph, the party who is not carrying the health insurance policy covering the children is ORDERED to furnish to the party carrying the policy, within fifteen days of receiving them, all forms, receipts, bills, and statements reflecting the health-care expenses the party not carrying the policy incurs on behalf of the children. In accordance with sections 1204.251 and 1504.055(a) of the Texas Insurance Code, IT IS ORDERED that the party who is not carrying the health insurance policy covering the children, at that party's option, or others as authorized by law, may file any claims for health-care expenses directly with the insurance carrier with and from whom coverage is provided for the benefit of the children and receive payments directly from the insurance company.

The party who is carrying the health insurance policy covering the children is ORDERED to submit all forms required by the insurance company for payment or reimbursement of health-care expenses incurred by either party on behalf of a child to the insurance carrier within fifteen days of that party's receiving any form, receipt, bill, or statement reflecting the expenses.

7. Constructive Trust for Payments Received—IT IS ORDERED that any insurance payments received by a party from the health insurance carrier as reimbursement for health-care expenses incurred by or on behalf of a child shall belong to the party who paid those expenses. IT IS FURTHER ORDERED that the party receiving the insurance payments is designated a constructive trustee to receive any insurance checks or payments for health-care expenses paid by


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the other party, and the party carrying the policy shall endorse and forward the checks or payments, along with any explanation of benefits received, to the other party within three days of receiving them.

8. WARNING—A PARENT ORDERED TO PROVIDE HEALTH INSURANCE OR TO PAY THE OTHER PARENT ADDITIONAL CHILD SUPPORT FOR THE COST OF HEALTH INSURANCE WHO FAILS TO DO SO IS LIABLE FOR NECESSARY MEDICAL EXPENSES OF THE CHILDREN, WITHOUT REGARD TO WHETHER THE EXPENSES WOULD HAVE BEEN PAID IF HEALTH INSURANCE HAD BEEN PROVIDED, AND FOR THE COST OF HEALTH INSURANCE PREMIUMS OR CONTRIBUTIONS, IF ANY, PAID ON BEHALF OF THE CHILDREN.

IT IS ORDERED that the child support as prescribed in this order shall be exclusively discharged in the manner ordered and that any direct payments made by KENNETH KYLE BIEDERMANN to AVIAN ANNE BIEDERMANN or any expenditures incurred by KENNETH KYLE BIEDERMANN during KENNETH KYLE BIEDERMANN's periods of possession of or access to the children, as prescribed in this order, for food, clothing, gifts, travel, shelter, or entertainment are deemed in addition to and not in lieu of the support ordered in this order

IT IS ORDERED that the provisions for child support in this order shall be an obligation of the estate of KENNETH KYLE BIEDERMANN and shall not terminate on the death of KENNETH KYLE BIEDERMANN. Payments received for the benefit of the children, including payments from the Social Security Administration, Department of Veterans Affairs, or other governmental agency or life insurance proceeds, annuity payments, trust distributions, or retirement survivor benefits, shall be a credit against this obligation. Any remaining balance of the child support is an obligation of KENNETH KYLE BIEDERMANN's estate.



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The provisions of this order relating to current child support terminate on the remarriage of KENNETH KYLE BIEDERMANN to AVIAN ANN BIEDERMANN unless a nonparent or agency has been appointed conservator of the children under chapter 153 of the Texas Family Code. An obligation to pay child support under this order does not terminate on the death of AVIAN ANN BIEDERMANN but continues as an obligation to DANA TRUE BIEDERMANN. The Court finds that the parties agree to the following, as evidenced by their signature

It is agreed that before setting any hearing or initiating discovery in a suit for modification of the terms and conditions of conservatorship, possession, or support of the children, except in an emergency, the parties shall mediate the controversy in good faith. This requirement does not apply to actions brought to enforce this order or to enforce any subsequent modifications of this order. It is agreed that the party wishing to modify the terms and conditions of conservatorship, possession, or support of the children shall give written notice to the other party of a desire to mediate the controversy. If, within ten days after receipt of the written notice, the parties cannot agree on a mediator or the other party does not agree to attend mediation or fails to attend a scheduled mediation of the controversy, the party desiring modification shall be released from the obligation to mediate and shall be free to file suit for modification.

Medical Notification

Each party is ORDERED to inform the other party within [number] hours of any medical condition of the children requiring surgical intervention, hospitalization, or both.

Required Information

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:

Name: AVIAN ANNE BIEDERMANN


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Social Security number: xx-xx-2272
Driver's license number and issuing state: Texas 00705712
Current residence address: 604 South Eagle, Apt. 510, Fredericksburg, Texas 78624
Mailing address: 604 South Eagle, Apt. 510, Fredericksburg, Texas 78624
Home telephone number: (830) 456-4686
Name of employer: Heritage Hair Salon
Address of employment: _____
Work telephone number: _____

Name: KENNETH KYLE BIEDERMANN
Social Security number: xxx-xx-5263
Driver's license number and issuing state: Texas 02811412
Current residence address: 208 E. Schubert, Fredericksburg, Texas 78624
Mailing address: 208 E. Schubert, Fredericksburg, Texas 78624
Home telephone number: (830) 998-7111
Name of employer: Biedermann's Ace Hardware
Address of employment: 1102 East Main Street, Suite B, Fredericksburg, Texas 78624
Work telephone number: (830) 997-7611

Required Notices

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE


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CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk at Gillespie County Courthouse, 101 West Main Street, Fredericksburg, TX 89734. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Contract Services Section, MC046S, P.O. Box 12017, Austin, Texas 78711-2017.

NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS


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ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000.

Warnings


WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

Dependency Exemptions for Children


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IT IS ORDERED AND DECREED that KENNETH KYLE BIEDERMANN shall have the right to claim the dependency exemption and any other deductions for the children, LOREN NOEL BIEDERMANN and DANA TRUE BIEDERMANN for the purpose of federal income taxes for 2012 and all future years.

IT IS FURTHER ORDERED AND DECREED that AVIAN ANNE BIEDERMANN shall execute Internal Revenue Service Form 8332 each year on or before December 31 for the current tax year beginning December 31, 2012 and on December 31 of each year thereafter until such time as both children are no longer dependants for purposes of U.S. Income Taxes.

Merger of Mediated Settlement Agreement

This order is stipulated to represent a merger of a mediated settlement agreement between the parties. To the extent there exist any differences between the mediated settlement agreement and this order, this order shall control in all instances.

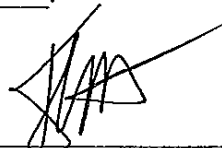
Relief Not Granted

IT IS ORDERED that all relief requested in this case and not expressly granted is denied. All other terms of the prior orders not specifically modified in this order shall remain in full force and effect.

Date of Order

SIGNED on _____

June 21, 2012



JUDGE PRESIDING

APPROVED AS TO FORM ONLY:




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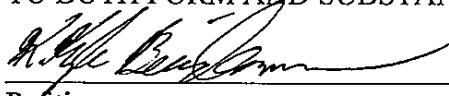
Cheryl Crenwelge Sione
Attorney for Petitioner
State Bar No.: 00787301
520 West Main Street
Fredericksburg, Texas 78624
Telephone: (820) 997-4663
Facsimile (830) 997-0496

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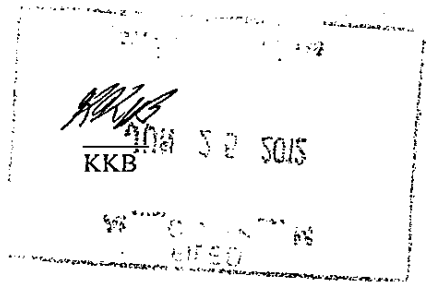

Brett L. Ferguson
Attorney for Respondent
State Bar No.: 24040889
327 Earl Garrett, Suite 104
Kerrville, Texas 78028
Telephone: (830) 895-2544
Facsimile: (830) 895-3353


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APPROVED AND CONSENTED TO AS
TO BOTH FORM AND SUBSTANCE:


Petitioner


Respondent


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JUN 22 2015
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