

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

ORIGINAL 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. Kenneth Kyle Biedermann, Respondent, is forty-one (41) years of age and resides at 110 W. Hackberry St., Fredericksburg, 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

Process should be served on Respondent at 110 W. Hackberry St., Fredericksburg, Texas.

FILED
At 12:35 O'clock PM

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.

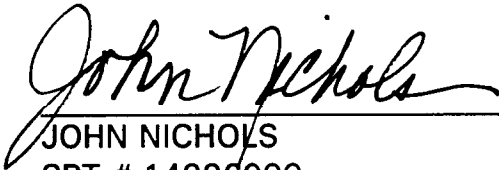
Petitioner prays that the Court immediately grant a temporary restraining order restraining the parties, in conformity with the allegations of this petition, from the acts set forth above, and Petitioner prays that, after notice and hearing, this temporary restraining order be made a temporary injunction.

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



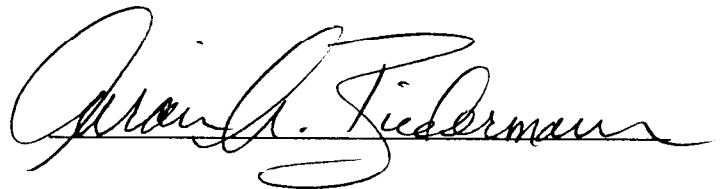
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ATTORNEYS FOR AVIAN ANNE BIEDERMANN

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
DISTRICT COURT
COUNTY OF DALLAS

VI 0.01000
FILED