

ORIGINAL¹

REPORTER'S RECORD

TRIAL COURT 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

X IN THE DISTRICT COURT
X
X
X
X 216TH JUDICIAL DISTRICT
X
X
X
X
X
X
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

By: Melody M. Ward, Deputy

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

Cindy E. Snider
CSR No. 2739

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* * * * *

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AUGUST 22, 2001

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CINDY E. SNIDER
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(By telephone conference call:)

THE COURT: All right, Madam Reporter, if you would reflect this is the 22nd day of August, 2001. We are in the 216th Judicial District Court of Kerr County, but I believe this is a Gillespie County matter, the Biedermann versus Biedermann divorce matter, and this is Charles Sherrill; and, Mr. Nichols, are you there?

MR. NICHOLS: Yes, I am here, Judge, along with Pamela Bergman.

THE COURT: All right, and Mr. Halm is there?

MR. HALM: Yes, Your Honor.

THE COURT: I have the official court reporter of the 216th Judicial District Court, the Honorable Cindy Snider, here, and let me just state right up front, gentlemen and lady, that I am the one that initiated this last order. I had no direction or so forth, but I did - will state right up front that I had a conversation with Kurt Rudkin and following the time that in which I had talked to Dr. Ferrell's report.

I do find and I am very concerned, and, Mr. Halm, I think your client is possibly very ill, very sick, and I was well aware that he was

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

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
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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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			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	

[illegible]

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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
10-4-01*

FILED
At 10:43 o'clock A.M.

AUG 23 2001

BARBARA MEYER
DISTRICT CLERK
GILLESPIE COUNTY, TEXAS
By: [Signature] Deputy