COPY

1 REPORTER'S RECORD

2 TRIAL COURT CAUSE NO. 9284

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

11 * * * * * * * * * * * * * * * * *

12 TELEPHONIC CONFERENCE

13 * * * * * * * * * * * * * * * * *

14 On Thursday, the 31st day of May,
15 2001, from 11:04 o'clock a.m. to 11:22 o'clock a.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 Bandera, Bandera County, Texas:
20
21
22
23 Proceedings reported by computerized
24 stenotype machine, valid if it bears my raised seal.
25 Cindy E. Snider
CSR No. 2739

1 APPEARANCES

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16 MR. JACK G. FERRELL, JR., PH.D.
Also Appearing By Telephone
17

18 * * * * * * * *

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24

25

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

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

1 REPORTER'S RECORD

2 TRIAL COURT CAUSE NO. 9284

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

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12 KEY WORD INDEX

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