

FILED
At 1:54 O'clock P M

CAUSE NO.: 9284

JAN 31 2001

IN THE INTEREST OF

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IN THE DISTRICT COURT

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KYLA RAE BIEDERMANN,

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EMILY LAINE BIEDERMANN,

\$

LOREN NOEL BIEDERMANN AND

\$

DANA TRUE BIEDERMANN

\$

216TH JUDICIAL DISTRICT

\$

MINOR CHILDREN

\$

GILLESPIE COUNTY, TEXAS

BARBARA MEYER
DISTRICT CLERK

GILLESPIE COUNTY, TEXAS
By *Nona Munz*, Deputy

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 relieve 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:

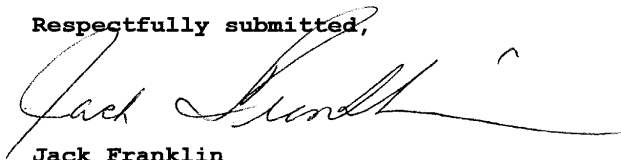
Both Kyle and Avian Biedermann have said that they will participate in mediation in an effort to resolve the custody matter. CASA has strongly encouraged them to work this out in mediation.

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.

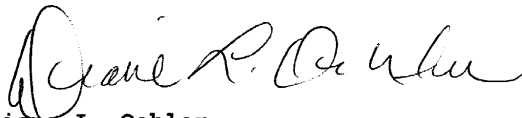
If Mr. and Mrs. Biedermann are not able to work this out and the court is forced to settle the matter for them, this CASA makes the following observations:

- 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 + I
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>	

Date	1/21/01	
Name	Arian A. Biedermann	
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	363.15	
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	4,371.58 (yearly)	
Installment Note		
Installment Note		
Installment Note		
Installment Note		
Other Sales Taxes & license	62.00 monthly	
Other Supplies for Salon	1716.00 yearly	
Other groceries	400.00 to 500.00	
Other - personal property	1700.00 to 2000.00	
Books for kids	34.00	
Total Payments	\$ 1598.02	1649.00
Net Cash Flow	291.23	1649.00