

Serve: *
Barry Hunter *
100 Joliet Street, S.W. *
Washington, D.C. 20032 *

and *

DIBELLA ENTERTAINMENT, INC. *
359 Sea Cliff Avenue *
Sea Cliff, New York 11579 *

Serve: *
Louis DiBella *
359 Sea Cliff Avenue *
Sea Cliff, New York 11579 *

Defendants. *

* * * * *

COMPLAINT

Plaintiffs Nieves Colon, Richard Colon, and Sean Bogle, Esquire, as legal guardians of the person and property of Prichard Colon, an incapacitated person, (“Prichard”), and Prichard Colon, individually, by and through their undersigned attorneys, bring this claim against Richard Ashby, M.D., Family Practice Medical Services, P.C., Headbanger’s Promotions, Inc., and DiBella Entertainment, Inc. (hereinafter “defendants”), for personal injuries and damages sustained as a result of defendants’ negligence in connection with a professional boxing match on October 17, 2015 (the “event” or “contest”).¹

¹ On September 29, 2016, plaintiffs gave notice pursuant to D.C. Code §16-2802 of their intent to file a medical malpractice lawsuit against Dr. Ashby and Family Practice Medical Services, P.C.

NATURE OF THE CASE

1. Prichard, a promising young professional boxer, lies in a vegetative state at his mother's home with no prospect of ever regaining his faculties because of injuries he suffered during a boxing event. This injury could have— and should have— been avoided if the ringside physician had complied with the applicable standard of care in treating Prichard during the event. The injury also could have been avoided had the event promoters ensured that a qualified ringside physician was on-hand to treat Prichard's injuries and if they had implemented a proper brain injury protocol. But there was no adequate proper brain injury protocol and the ringside physician (a family medicine practitioner and himself a licensed boxing promoter) was ill-equipped to evaluate and obtain treatment for Prichard. Instead, the ringside physician stood by as Prichard was repeatedly and illegally punched in the vulnerable and unprotected back of his head, failed to recognize signs of a brain bleed, and inexplicably sent Prichard back to continue fighting rather than to the hospital for treatment. Prichard collapsed after the event. By the time he was sent to the hospital, the bleed in his brain was massive. Despite surgery, Prichard was left in a persistent vegetative state.

JURISDICTION

2. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §11-921.

3. This Court has personal jurisdiction over the defendants pursuant to D.C. Code §13-422 and §13-423.

4. The District of Columbia is an appropriate forum because Dr. Ashby practices medicine and maintains his principal place of business in the District of Columbia. Family Practice Medical Services, P.C., and Headbanger's Promotions, Inc. are incorporated and maintain their

principal place of business in the District of Columbia. DiBella Entertainment, Inc. conducts regular, substantial and purposeful business in the District of Columbia, including business activities in promoting the event that led to Prichard's injuries. The District of Columbia also has many substantial contacts with the litigation and none of the parties would be inconvenienced by conducting the trial here.

PARTIES

5. Prichard Colon (DOB: 9/19/92) was an undefeated professional boxer considered by many in the sport to be a future world champion. As a result of the injuries he suffered during the event, the Circuit Court for Orange County, Florida has rendered Prichard "incapable of exercising any rights." Plaintiff Nieves Colon is Prichard's mother. She lives in Winter Park, Florida. Plaintiff Richard Colon is Prichard's father, also a Florida resident. They provide full time care for Prichard in Ms. Colon's home in Winter Park, Florida. Together Nieves Colon and Richard Colon (divorced) have been appointed co-guardians of the person of Prichard. Plaintiff Sean Bogle is an attorney practicing in Winter Park, Florida and is the legal guardian of the property of Prichard.

6. Defendant Richard Ashby, M.D. is a physician who provides medical care under Family Practice Medical Services, P.C. located at 1647 Benning Road, NE, #302, Washington, D.C. He is or has been affiliated with The Washington Hospital Center, Providence Hospital, and Howard University Hospital, where he also teaches, all located in the District of Columbia. Dr. Ashby also promotes boxing matches operating under RBA Promotions, LLC and, at the time of the incident, maintained a boxing license in the District of Columbia, promoted fights in the District of Columbia, and maintains continuous and systematic contacts with the District of Columbia.

7. Defendant Family Practice Medical Services, P.C. is a District of Columbia professional corporation through which Dr. Ashby operates a family medicine practice located at 1647 Benning Road, NE, #302, Washington, D.C. At all times relevant to this Complaint, on information and belief, Dr. Ashby was practicing medicine in the scope of his employment, or as an agent or apparent agent, of Family Practice Medical Services, P.C.

8. Headbanger's Promotions, Inc. ("Headbanger's Promotions") is incorporated and headquartered in Washington D.C. and promotes boxing matches in the District of Columbia area. Headbanger's Promotions also operates a facility called Headbanger's Gym located at 100 Joliet Street, S.W., Washington, D.C., where it, among other things, trains boxers to compete in contests it promotes, advertises, and markets, including the event in which Prichard suffered his injuries.

9. Defendant DiBella Entertainment, Inc. ("DiBella") is headquartered in Sea Cliff, NY, and at all times relevant to this Complaint was associated with Headbanger's Promotions in Washington, D.C., and maintains continuous and systematic contacts with the District of Columbia. Headbanger's Promotions and DiBella promoted the event and are collectively referred to herein as "the event promoters."

RELEVANT FACTS

The Event Promoters

10. The event promoters arranged a boxing match between Prichard and Terrel Williams on October 17, 2015 at Eagle Bank Arena in Virginia.

11. The event promoters were responsible for promoting, advertising, conducting, managing, operating, supervising, and controlling the contest.

12. The event promoters operated out of the District of Columbia. They marketed the event to District of Columbia residents, tourists, employees, and others, touting the bout as a D.C.

area fight. At the behest of the event promoters, the boxers held pre-fight press conferences at The Hamilton Hotel in Washington, D.C. The event promoters highlighted Headbanger's Promotions' fighter and District of Columbia native Lamont Peterson to sell tickets.

13. Prior to the event, the event promoters were responsible for, among other things, various aspects of boxer safety for the event. For example, the event promoters were responsible for ensuring there was sufficient padding in the ring, easy access to the ring for the ringside physician, proper weight of the boxing gloves, a fully equipped ambulance with a trained ambulance crew at the site, providing notice to the nearest hospital in case of a medical emergency, and obtaining insurance for the event.

14. The event promoters owed Prichard a duty of care to hire, appoint, choose, recruit and approve personnel who would enforce, instruct, advise, and abide by the applicable standards of care.

15. Given that a traumatic brain injury is foreseeable in a boxing match, the event promoters owed Prichard a duty of care to ensure that adequate guidelines, procedures, and protocols were in place to identify neurological signs and symptoms of a brain bleed and to facilitate treatment of such an injury.

16. No such event protocol was in place for the contest.

17. The event promoters had a duty to ensure that the specific ringside physician was properly trained, experienced, competent, qualified, unbiased, and skilled to perform the neurological examinations necessary to determine if one of the fighters had suffered a traumatic brain injury. They failed to do so.

Dr. Ashby and Family Medical Practices Services, P.C.

18. Dr. Ashby served as the ringside physician. In so doing, he created a doctor-patient relationship with Prichard and assumed the duty to comply with the applicable standard of care to treat a patient (such as Prichard) who may be suffering from internal bleeding in his brain.

19. Dr. Ashby held himself out to be qualified to serve as the ringside physician and to render medical services, care, and treatment to Prichard and to determine if and when additional medical care and treatment was required.

20. Dr. Ashby is a family medicine practitioner. He put himself in a position where he would be called upon to make medical decisions that he knew or should have known he was not equipped to make.

21. Dr. Ashby lacked the necessary training and experience to properly assess whether one of the boxers suffered a traumatic brain injury during the contest.

22. At the time of the event, Dr. Ashby was a licensed boxing promoter operating under the name RBA Promotions, LLC, which advertises and promotes boxing matches in the D.C. area.

23. Upon information and belief, Dr. Ashby has a past business relationship with the event promoters.

24. Dr. Ashby's sole obligation was to carry out his duties as a ringside physician. He owed a duty only to the two boxers, not to the event promoters, the fans in the arena, or those watching on television.

25. Prichard justifiably and reasonably relied on Dr. Ashby's purported training, expertise, and commitment to serve as the ringside physician to ensure Prichard would receive appropriate medical observation and treatment in compliance with the applicable standard of care.

26. Dr. Ashby's role as a boxing promoter created a conflict between his duty to follow the standard of care he owed to the boxers and his interest in advancing his career as a fight promoter.

The Fight

27. Williams "rabbit punched" Prichard in the first round of the contest. A "rabbit punch" is an illegal blow delivered by a boxer that strikes the back of the opponent's neck or head. The name originates from hunters who used to kill rabbits with a quick, sharp blow to the back of the rabbit's head. Rabbit punches can cause severe injury to the brain and spinal cord.

28. Over the next several rounds, Williams continued to rabbit punch Prichard, who repeatedly complained to the referee both verbally and by rubbing the back of his head.

29. In the fifth round, Williams screamed at Prichard and made a cut throat gesture.

30. In the six round, the referee warned both fighters, including telling Williams to stop hitting Prichard in the back of the head.

31. Dr. Ashby ignored Prichard's repeated complaints of pain in the back of his head during the event. After witnessing Prichard's complaints and the repeated illegal shots to the back of Prichard's head, Dr. Ashby was required to examine Prichard to determine whether he was experiencing bleeding in his brain. But Dr. Ashby failed to do so.

32. In the seventh round of the contest, Williams unloaded another blow to the back of Prichard's head. Prichard fell to the canvas writhing in pain and holding the back of his head. Because the punch was illegal, the referee allowed Prichard additional time to recover.

33. Dr. Ashby watched Prichard in pain on the canvas for nearly a full minute. During this time, Williams screamed at Prichard, and made another cut throat gesture toward Prichard.

34. Dr. Ashby waited for the referee's request for him to examine Prichard. Dr. Ashby then performed a superficial, inadequate, and insufficient examination of Prichard in violation of the applicable standard of care. Prichard reported to Dr. Ashby that, among other things, the back of his head hurt and he was "dizzy." These self-reported symptoms—headache and dizziness—are indicative of bleeding in the brain.

35. The standard of care required Dr. Ashby to properly evaluate Prichard's neurological condition and immediately send him to an emergency room for a CT scan, close observation, and to evacuate the bleed if necessary. Dr. Ashby failed to take any of the required steps.

36. Dr. Ashby should have instructed the referee to stop the fight or stopped the fight himself. Instead, Dr. Ashby sent his patient who was suffering from a brain bleed back into the ring.

37. None of the defendants acted to stop the fight despite Prichard's complaints of pain and dizziness.

38. Prichard reasonably relied on the medical judgment of Dr. Ashby— a medical professional put in place to diagnose the condition from which Prichard suffered— in assuming it was safe for him to continue fighting. Had the event promoters provided Dr. Ashby with a brain injury protocol to follow or had Dr. Ashby complied with the applicable standard of care in evaluating brain bleeds and taken steps to rule out a bleed, the bout would have ended. Prichard would then have been taken to the closest emergency room for evacuation of the bleed, and he would have avoided permanent brain damage.

39. Prichard collapsed shortly after the contest. Only then was he taken to Inova Fairfax Hospital where he was diagnosed with a large left-sided subdural hematoma measuring 1.5cm in

diameter and causing a 1.2cm midline shift. He required an emergent hemicraniectomy to relieve the brain swelling and evacuate the blood. Prichard was eventually transferred to the Shepherd Center in Atlanta, Georgia and, from there, to his mother's home.

40. Prichard never regained consciousness. Today he remains in a persistent vegetative state requiring full time care.

COUNT I

(Negligence Against the Health Care Providers)

41. Plaintiffs incorporate the prior paragraphs as if fully alleged herein.

42. Dr. Ashby formed a doctor-patient relationship when he agreed to serve as the ringside physician for the fight.

43. Acting as Prichard's physician, Dr. Ashby owed Prichard a duty to comply with the applicable standard of care.

44. Dr. Ashby deviated from the applicable standard of care. His deviations included, but were not limited to, accepting the position as ringside physician without an adequate brain injury protocol; agreeing to serve as a ringside physician and assuming the duty of care for Prichard while not having the proper training or medical knowledge to ensure the boxer's health and well-being; failing to disclose his conflict of interest and to honor his obligation to Prichard over advancing his career as a promoter; failing to adequately screen Prichard for a brain bleed during the contest; ignoring Prichard's complaints of pain and dizziness; failing to stop the fight and to send Prichard to the hospital and to otherwise render timely medical aid.

45. As a proximate cause of Dr. Ashby's negligence, Prichard endured and continues to endure severe pain and suffering, lost the ability to engage in gainful employment, and suffered life-altering injuries that will require around-the-clock care for the rest of his life.

COUNT II

(Negligence Against the Event Promoters)

46. Plaintiffs incorporate the prior paragraphs as if fully alleged herein.

47. The event promoters owed the boxers a duty of reasonable care to prevent a serious injury.

48. The event promoters breached their duty by including, but not limited to, the following: failing to make sure that guidelines, procedures, and protocols were in place during the event to properly prevent and assess bleeding in the brain of one of the boxers; failing to have guidelines, procedures, and protocols in place to terminate the contest once Prichard sustained a traumatic brain injury; failing to ensure that Dr. Ashby was properly trained, experienced, competent, qualified, unbiased and skilled to perform the necessary neurological examinations to detect and to determine the extent of a brain bleed; failing to ensure that Dr. Ashby was qualified to act as ringside physician given his conflict of interest as a licensed fight promoter; and failing to hire, appoint, choose, recruit and approve personnel who would enforce, instruct, advise, and abide by the governing applicable standards of care to prevent serious injury to the boxers.

49. As a proximate cause of the event promoters' negligence, Prichard endured and continues to endure severe pain and suffering, lost the ability to engage in gainful employment, and suffered life-altering injuries that will require around-the-clock care for the rest of his life.

WHEREFORE, plaintiffs respectfully request judgment against defendants in an amount to be determined at trial but believed to be an amount exceeding \$50,000,000 in compensatory damages, pain and suffering, and such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Ari S. Casper

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JURY PRAYER

The plaintiffs demand a trial by jury on all issues.

/s/ Ari S. Casper

Ari S. Casper