

IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

CASE NO: 2021 CA 000304

M.D.,

Plaintiff,

v.

GERARD ABATE, M.D.,

Defendant.
_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, M.D., hereby sues Gerard Abate, M.D., and alleges:

JURISDICTION AND VENUE

1. This is a suit for torts involving a claim for damages in excess of this Court's jurisdictional minimum, thirty thousand dollars (\$30,000.00), exclusive of any claim for attorney's fees, interest or costs.

2. Venue is proper in this Court since the causes of action herein accrued in Flagler County, Florida, including that the sexual assault at issue occurred in Flagler County.

PARTIES

3. Plaintiff M.D. is an adult female individual and is a citizen of and domiciled in Florida. Pursuant to Florida law and the Rules of this Court, including Fla. R. Jud. Admin. 2.420 (d), as a survivor of sexual offenses, Plaintiff M.D. is identified by her initials only. Notwithstanding, in advance of the filing of this suit, the identity of Plaintiff was confirmed to Defendant by undersigned counsel in correspondence.

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4. Defendant Gerard Abate, M.D., is an individual and is a citizen of and domiciled in Flagler County, Florida. Hereafter, Defendant is referred to as “Dr. Abate.”

FACTS COMMON TO ALL COUNTS

5. In 2017, Plaintiff enrolled as a member of an Internet dating web site. Upon enrollment, she completed a “profile” that was published on that web site for other members to review to consider any interest in communicating and ultimately meeting her for a possible dating and romantic relationship.

6. Plaintiff’s profile on that dating web site expressly stated an interest in a serious, long-term relationship and one into which she would move slowly.

7. Plaintiff reviewed profiles of male members of that Internet dating web site for the same purpose.

8. Dr. Abate was also a member of that dating web site. His profile on that site included a photograph of himself, and he identified himself as a “Single Male seeking Females.” His nickname on the site suggested his profession as a medical doctor, to wit, “Boreddocdx.”

9. Plaintiff met Dr. Abate through the aforesaid dating web site after having reviewed his profile on the site.

10. Unbeknownst to Plaintiff at that time, Dr. Abate’s representation on his profile that he was “single” was false. He was then and remains married to his wife of many years.

11. Plaintiff would not have communicated with Dr. Abate or engaged in any other contact whatsoever had she known that he was in a committed marriage; Plaintiff finds adultery morally repugnant and sought to have a dating and romantic relationship with a single male.

12. Prior to reviewing Dr. Abate's profile on the dating web site, Plaintiff had no prior knowledge of him and no social, professional, family or other connections in common with him from which she would have had the ability to know or obtain information about Defendant.

13. Shortly after meeting on that dating web site, Plaintiff and Dr. Abate communicated off the site using their individual email accounts. During those communications in July 2017:

a. Dr. Abate failed to disclose the misrepresentation on his profile that he was married.

b. Dr. Abate acted as if he was single and that he too was interested in the type of committed relationship that Plaintiff desired as reflected in her profile, including:

i. By touting his professional success as a doctor;

ii. By highlighting the views from his ocean-front residence and responding to her admiration of that view shown in a photograph, specifically her statement "nice view," with "Now I need someone to enjoy it with";

iii. By asking about Plaintiff's interests in food, vacations, music and the like, and sharing his interests;

iv. By stating his love of travel and suggesting they could travel together, including that it would be "nice" to travel together to Costa Rica;

v. By responding to Plaintiff's statement of loving the beach and boating with "nice ... my kind of girl"; and

vi. By stating he lived full time in Florida now and was "selling my house in Pennsylvania" without making mention that he co-owned both homes with his wife.

14. Plaintiff also reaffirmed to Dr. Abate in a message before meeting in person with Dr. Abate that her profile indicated she was interested in a long-term relationship and moving slowly in a relationship.

15. After exchanging these messages, Dr. Abate invited Plaintiff to meet in person, which she accepted; on that first date, the two met for coffee.

16. Subsequently, Dr. Abate invited Plaintiff to his home in Flagler County, which she accepted on July 22, 2017.

17. While at Dr. Abate's home on July 22, 2017, on information and belief Dr. Abate spiked Plaintiff's drink while she was in the restroom with some drug that impaired her to the point of blacking out and being only mildly conscious. In that condition, she was unable to exert control over her environment, and unable to control what she was doing or what was done to her. While she was in that condition, Dr. Abate did sexually assault Plaintiff.

18. Upon regaining sufficient abilities to do so, Plaintiff escaped Dr. Abate's residence.

19. In text messages following the sexual assault, Dr. Abate admitted to specific sexual acts that he engaged in with Plaintiff.

20. Subsequent to the sexual assault, Plaintiff discovered that Dr. Abate was married.

21. Subsequent to the sexual assault, Plaintiff discovered that others had complained of Dr. Abate being dishonest and misrepresenting himself as single on dating web sites.

22. Subsequent to the sexual assault, Plaintiff demanded that Dr. Abate submit to testing for sexually transmitted diseases and provide the results to her. He complied. The results were positive for a sexually transmitted disease. As such, Plaintiff was subjected to living in fear of having contracted the disease from Dr. Abate.

23. Subsequent to the sexual assault, Plaintiff confronted Dr. Abate about the financial impact on her of the offenses he committed against her, including medical expenses and loss of income due to a reduced ability to work. In response:

a. Dr. Abate confirmed to Plaintiff his responsibility for causing damage to her and has since provided limited funds toward her losses, including what he confirmed in writing were her “medical bills” and “therapy.”

b. On October 16, 2018, Dr. Abate reiterated his responsibility in writing for what he did to Plaintiff by admitting that her ongoing need for financial assistance was his responsibility and by agreeing in writing to provide that assistance. On that day, he paid another \$3,000.00 towards her expenses.

c. Consistent with his actions on October 16, 2018, later than month, he paid Plaintiff another \$3,000.00.

d. Consistent with his actions on October 16, 2018, he previously paid Plaintiff monies towards her damages in February, June and September 2018, each time in the amount of \$3,000.00.

24. Dr. Abate ceased communicating with Plaintiff after providing the sexually transmitted disease test results and provided no more financial assistance for the damages he caused.

**COUNT I
SEXUAL BATTERY**

25. Plaintiff realleges and incorporates into this Count the Facts Common to All Counts alleged above.

26. On or about July 22, 2017, Dr. Abate did commit sexual battery against Plaintiff within the meaning of that term as defined by Fla. Stat. sec. 794.011 (1)(h).

27. Plaintiff did not consent to any such sexual acts; the acts were against her will.

28. The aforesaid contact with Plaintiff's body was offensive and harmful.

29. As a direct, proximate and foreseeable result of Defendant's illegal acts, M.D. has suffered in the past, at present and will suffer into the future emotional damage and mental health harm, infliction of mental health disorders, bodily harm, physical pain and suffering, mental and emotional pain and suffering, disability, mental anguish, aggravation of pre-existing mental health conditions and harm, loss of capacity for the enjoyment of life, and past and future expenses for mental health and medical treatment, including hospitalization, medical and nursing care, medicines and mental health treatment, lost wages and loss of earning capacity. The losses are either permanent or continuing in nature and Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff M.D. demands judgment against Defendant for compensatory and all other damages available at law, costs, and all other such relief as the Court may deem just and proper.

**COUNT II
BATTERY**

30. Plaintiff realleges and incorporates into this Count the Facts Common to All Counts alleged above.

31. On or about July 22, 2017, Dr. Abate did commit battery against Plaintiff by touching her body and private parts of her body repeatedly and purposefully.

32. Plaintiff did not consent to any such touch.

33. The aforesaid contact with Plaintiff's body was offensive and harmful.

34. The aforesaid contact with Plaintiff's body constituted battery within the meaning of Fla. Stat. sec. 784.03 (1).

35. As a direct, proximate and foreseeable result of Defendant's illegal acts, Plaintiff M.D. has suffered in the past, at present and will suffer into the future emotional damage and mental health harm, infliction of mental health disorders, bodily harm, physical pain and suffering, mental and emotional pain and suffering, disability, mental anguish, aggravation of pre-existing mental health conditions and harm, loss of capacity for the enjoyment of life, and past and future expenses for mental health and medical treatment, including hospitalization, medical and nursing care, medicines and mental health treatment, lost wages and loss of earning capacity. The losses are either permanent or continuing in nature and Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff M.D. demands judgment against Defendant for compensatory and all other damages available at law, costs, and all other such relief as the Court may deem just and proper.

**COUNT III
AGGRAVATED BATTERY**

36. Plaintiff realleges and incorporates into this Count the Facts Common to All Counts alleged above.

37. On or about July 22, 2017, Dr. Abate did commit aggravated battery against Plaintiff by touching her body and private parts of her body repeatedly and purposefully.

38. Plaintiff did not consent to any such touch.

39. The aforesaid contact with Plaintiff's body was offensive and harmful.

40. The aforesaid contact with Plaintiff's body was committed by Dr. Abate with knowledge or intent to inflict great bodily harm and permanent disability which did, in fact, result.

41. The aforesaid contact with Plaintiff's body constituted aggravated battery within the meaning of Fla. Stat. sec. 784.045 (1)(a) 1.

42. As a direct, proximate and foreseeable result of Defendant's illegal acts, Plaintiff M.D. has suffered in the past, at present and will suffer into the future emotional damage and mental health harm, infliction of mental health disorders, bodily harm, physical pain and suffering, mental and emotional pain and suffering, disability, mental anguish, aggravation of pre-existing mental health conditions and harm, loss of capacity for the enjoyment of life, and past and future expenses for mental health and medical treatment, including hospitalization, medical and nursing care, medicines and mental health treatment, lost wages and loss of earning capacity. The losses are either permanent or continuing in nature and Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff M.D. demands judgment against Defendant for compensatory and all other damages available at law, costs, and all other such relief as the Court may deem just and proper.

**COUNT IV
EXPOSING ANOTHER TO SEXUALLY TRANSMISSIBLE DISEASE
WITHOUT NOTICE AND CONSENT**

43. Plaintiff realleges and incorporates into this Count the Facts Common to All Counts alleged above.

44. On information and belief, prior to meeting Plaintiff, Dr. Abate contracted and knew he was infected with a sexually transmissible disease within those diseases that are enumerated in Fla. Stat. sec. 384.24.

45. On information and belief, prior to meeting Plaintiff, Dr. Abate was informed that the disease could be transmitted to another person through sexual intercourse.

46. Dr. Abate engaged in sexual acts and intercourse with Plaintiff through which that disease could be transmitted to Plaintiff.

47. Dr. Abate did so without informing Plaintiff of the presence of the sexually transmissible disease and without obtaining her consent after disclosure to the sexual intercourse.

48. Only after the sexual assault and when Plaintiff demanded that Dr. Abate submit to testing for sexually transmissible diseases did Plaintiff learn that Dr. Abate had such a disease and could have transmitted it to her.

49. The disease to which Dr. Abate exposed Plaintiff is incurable and can only be controlled with medical interventions.

50. Persons with the disease must abstain from sexual activity when symptoms of the disease arise.

51. Asymptomatic persons with the disease can still infect sex partners.

52. The aforesaid acts by Dr. Abate constituted a violation of Florida law.

53. As a direct, proximate and foreseeable result of Defendant's illegal acts, Plaintiff M.D. has suffered in the past, at present and will suffer into the future emotional damage and mental health harm, infliction of mental health disorders, bodily harm, physical pain and suffering, mental and emotional pain and suffering, disability, mental anguish, aggravation of pre-existing mental health conditions and harm, loss of capacity for the enjoyment of life, and past and future expenses for mental health and medical treatment, including hospitalization, medical and nursing care, medicines and mental health treatment, lost wages and loss of earning capacity. The losses are either permanent or continuing in nature and Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff M.D. demands judgment against Defendant for compensatory and all other damages available at law, costs, and all other such relief as the Court may deem just and proper.

**COUNT V
POISONING**

54. Plaintiff realleges and incorporates into this Count the Facts Common to All Counts alleged above.

55. On or about July 22, 2017, Dr. Abate did knowingly and intentionally introduce, add, or mingle a chemical compound with drink that he knew would be and intended to be ingested and consumed by Plaintiff with intent to injure her.

56. Dr. Abate did so with the intent to commit battery, aggravated battery, sexual assault and sexual battery against Plaintiff.

57. Dr. Abate's conduct was in violation of Fla. Stat. sec. 859.01.

58. As a direct, proximate and foreseeable result of Defendant's illegal acts, Plaintiff M.D. has suffered in the past, at present and will suffer into the future emotional damage and mental health harm, infliction of mental health disorders, bodily harm, physical pain and suffering, mental and emotional pain and suffering, disability, mental anguish, aggravation of pre-existing mental health conditions and harm, loss of capacity for the enjoyment of life, and past and future expenses for mental health and medical treatment, including hospitalization, medical and nursing care, medicines and mental health treatment, lost wages and loss of earning capacity. The losses are either permanent or continuing in nature and Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff M.D. demands judgment against Defendant for compensatory and all other damages available at law, costs, and all other such relief as the Court may deem just and proper.

**COUNT VI
RAPE AND SEXUAL ASSAULT BY DECEPTION OR FRAUD**

59. Plaintiff realleges and incorporates into this Count the Facts Common to All Counts alleged above.

60. On and prior to July 22, 2017, Dr. Abate did misrepresent to Plaintiff that he was a single, unmarried individual.

61. Dr. Abate made those misrepresentations intentionally and purposefully in order to deceive Plaintiff into entering into a relationship with him that would include sexual contact between them.

62. On or about July 22, 2017, Dr. Abate did engage in the misrepresentations with the intent of inducing Plaintiff into engaging in sexual acts and sexual intercourse with him.

63. In the absence of those misrepresentations, Dr. Abate knew that Plaintiff would not engage in sexual acts or sexual intercourse with him.

64. In the absence of those misrepresentations, Plaintiff would not have engaged in any dating relationship, sexual act or sexual intercourse with Dr. Abate and any consent she provided to same was obtained by deception, coercion and fraud such that any willing act by Plaintiff is deemed non-consensual, against her will and otherwise void as a matter of law.

65. On or about July 22, 2017, having enticed, induced, coerced and defrauded Plaintiff to enter his home in Flagler County as part of a dating relationship, Dr. Abate did engage in sexual acts and sexual intercourse with Plaintiff.

66. Subsequent to July 22, 2017, Plaintiff discovered that Dr. Abate was then and had been for many years married to his wife, Lynda.

67. As a direct, proximate and foreseeable result of Defendant's illegal acts, Plaintiff M.D. has suffered in the past, at present and will suffer into the future emotional damage and

mental health harm, infliction of mental health disorders, bodily harm, physical pain and suffering, mental and emotional pain and suffering, disability, mental anguish, aggravation of pre-existing mental health conditions and harm, loss of capacity for the enjoyment of life, and past and future expenses for mental health and medical treatment, including hospitalization, medical and nursing care, medicines and mental health treatment, lost wages and loss of earning capacity. The losses are either permanent or continuing in nature and Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff M.D. demands judgment against Defendant for compensatory and all other damages available at law, costs, and all other such relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury for all issues triable as of right by jury.

Respectfully submitted,

s/ Michael Dolce
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