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Kate R. Morgan, Clerk

Kentucky Court of Appeals

**COMMONWEALTH OF KENTUCKY  
COURT OF APPEALS  
CASE NO. 2024-CA-\_\_\_\_\_**

**ZEDAN RACING STABLES, INC.,***Appellant/  
Movant*

v.

On Appeal from Jefferson Circuit Court,  
No. 24-CI-002331

**CHURCHILL DOWNS INCORPORATED.***Appellees/  
Respondents*


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**ZEDAN RACING STABLES’  
EMERGENCY MOTION FOR RELIEF PURSUANT TO RAP 20(D)**

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Pursuant to Kentucky Rules of Appellate Procedure 7, 20, and SCR 1.030(3), Zedan Racing Stables (“Zedan”) respectfully asks a member of this Court immediately to grant limited relief from an order entered by the Circuit Court denying Zedan’s motion for a temporary injunction and to issue a temporary injunction pending the resolution of Zedan’s RAP 20 motion. As described in Zedan’s RAP 20 motion, which Zedan incorporates here in full, the Circuit Court’s errors are such that Zedan is entitled to a temporary injunction of limited contours by Saturday, April 27, 2024, at 11 am ET, so that the weighty issues posed in this case, freighted with public importance, can be duly and fairly decided by this Court in advance of the upcoming Kentucky Derby.

To be entitled to intermediate relief, a party must show that he or she “will suffer irreparable injury before a motion under sections (B) or (C) of this rule will be considered by a panel of the Court of Appeals.” RAP 20(D). Here, that showing is ironclad: The 150th Kentucky Derby will be held May 4, 2024, and Plaintiff-Appellant Zedan Racing Stables, Inc.’s world-class thoroughbred, Muth, is right at the top of the list of horses that

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have qualified to race there. One thing stands in Muth’s way: a bizarre ban that Defendant-Appellee Churchill Downs Incorporated (CDI) has unlawfully extended to exclude all horses (including Muth) trained by the legendary Bob Baffert, who is tied for the most Derby wins of all time. That extended Baffert ban is the subject of Zedan’s urgent plea for a temporary injunction, which must be decided at least in part before all horses are due to be stabled at Churchill Downs on Saturday, April 27, 2024, at 11 am ET, lest this pivotal dispute become moot.

Baffert’s ban began in 2021. After that year’s Derby, CDI suspended Baffert from training horses that compete in the Derby for two years based on an alleged doping-rule violation (involving trace amounts of a non-performance-enhancing substance that had been used to treat a horse’s skin lesion). With that suspension, CDI promised—and later confirmed its promise over and over in federal court—that Baffert-trained horses would be allowed to compete again beginning in the upcoming 2024 Derby so long as Baffert committed no “additional violations in any racing jurisdiction.” Since then, Baffert undisputedly has steered clear of any such violation over the course of hundreds of ensuing races. And in reliance on CDI’s promise, Zedan spent over 15 million dollars to purchase and have Baffert train horses for this year’s Derby.

Now, even though Muth has qualified for and is among the favorites to win the Derby, CDI continues to close its gates to Muth (among other Baffert-trained and qualified horses) by enforcing an arbitrary and vindictive extension of its Baffert ban. That ban is at the center of this dispute, and it is has been nakedly exposed as the twisted product of a petty, personal vendetta against an all-time-great horse trainer. No one should misperceive that the ban protects integrity, or safety, or fairness, or anything of the sort. To the contrary,

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CDI has announced to the world that its ban reflects CDI's "subjective" opinion about the public "narrative" it hears from Baffert and finds displeasing. Of course, racetracks should not be disqualifying would-be winners and skewing the results for the sake of censoring trainers and ensuring public "narratives" align with its self-serving spin. CDI's approach violates its own avowed principles, basic fairness, and, most importantly, governing law.

Without purporting to find any substantive justification for CDI's ban, the Circuit Court denied Zedan's request for temporary injunctive relief. After rejecting several of CDI's defenses and determining that standing did not prevent it from resolving Zedan's request, the Court questioned the irreparable harm threatening Zedan. In particular, the Court suggested that Zedan could have avoided its injuries by transferring its horses to a different trainer back in January—months before this year's Derby. But such harsh medicine would have rivaled the disease that this lawsuit seeks to cure. Trainers are not fungible and no one can substitute for the legendary Bob Baffert; Zedan's horses have been seriously hampered when they have had to transfer away from Baffert in prior years. Switching trainers mid-stream, in response to CDI's surprising, unwarranted extension of its ban, would have mooted this case while denying Zedan and Muth their rightful chance to contend for this year's Derby according to the undisputed record proof.

The Court next reasoned that the balance of equities and the interests of the public weighed in favor of denying the injunction request because (1) "Churchill Downs, as the host of one of the most preeminent sporting events in the world, has a duty to ensure that the rules and regulations put in place to guarantee an even playing field are upheld and followed," (2) "[p]ublic trust and confidence in the integrity of the races run at Churchill Downs are essential to its business" and to "all those who attend or watch races at Churchill

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Downs,” and (3) there are “third parties who will have their horses removed from the Derby field to make room for the Plaintiff’s horse should the Court grant injunctive relief.” Op. 7. Zedan embraces those same premises. And Zedan is respectfully seeking relief because those vital considerations *favor granting* an injunction.

As things presently stand, fans and bettors are losing the chance to see the best, fastest thoroughbreds compete at the Derby. The 150th Kentucky Derby is relegating the winning horse to having an asterisk next to its name, at the expense of all the contending owners. Subsequent Derbies may be rendered largely irrelevant as industry leaders transition elsewhere. The Commonwealth of Kentucky and its citizens are seeing tax revenue, jobs, tourism, and external investment put at risk, alongside their venerable institution. And CDI and its shareholders are seeing its most valuable asset sacrificed to no good end.

Last, the court raised questions about certain aspects of Zedan’s claims on the merits. But those questions are readily and resoundingly answered by the current evidentiary record, which well establishes substantial grounds for Zedan to prevail. The Court first indicated that Zedan’s promissory estoppel claim was unlikely to succeed because CDI’s June 2021 statement “indicate[d] a more ‘wait and see’ approach to Mr. Baffert’s suspension” and the “barebones” record did not make clear that CDI should have expected others to rely on that statement. Op. 8. But while the record cannot yet be as developed as it will be post-discovery, it is hard to imagine how a record could be much stronger in the current preliminary posture—CDI issued a public statement with the guidance from its sophisticated top executives stating that, absent “additional violations,” Baffert’s extension would be for just two years, such that competitors could safely employ

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Baffert in the years-long training process leading up to the 2024 Derby. That is no wait and see approach, but a green light for Derby hopefuls such as Zedan to enlist Baffert’s help in campaigning towards this year’s Derby, absent another violation, which never occurred.

In assessing Zedan’s judicial-estoppel claim, the Court determined that CDI’s statements in a prior federal case that Baffert’s ban was for just two years did “not rise to the level typically required for a finding of judicial estoppel.” Op. 9. But judicial estoppel does not apply only to statements that reach a certain “level.” It applies whenever a party receives an unfair benefit by espousing a position that is inconsistent with its prior successful submission in court. Here, there should be no question that the doctrine bars CDI now from contradicting its earlier statements—as understood by the court that relied on them—that “CDI’s suspension [wa]s temporary and w[ould] expire in just a few months” during 2023. Ex. 17, *Baffert v. CDI*, No. 3:22-cv-123-RGJ (W.D. Ky.), Dkt. 70 at 29.

Finally, as to the controlling federal statute administered by HISA, establishing uniformity of regulation across racetracks, the Court was “unpersuaded at this point that preemption extends as far as the Plaintiff suggests,” such that there could be “a conflict between federal law and the actions or rights of a private entity.” Op. 9. On that theory, every private race track remains free to do whatever it pleases, whereupon the whole purpose of HISA—achieving uniformity of regulation securing the safety, integrity, and fairness of horseracing throughout the United States— would be eviscerated. Thankfully, it is well settled that federal law in fact preempts private actors’ state-law rights, per the Supremacy Clause.

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Because Zedan's horse will be excluded from the Derby on May 4 absent the requested relief, Zedan respectfully submits that a temporary injunction should issue posthaste. At a minimum, a partial injunction should issue enabling Muth to be stabled under Derby rules at Churchill Downs Race Track by 11:00 a.m. Eastern on Saturday, April 27, 2024. Such an approach will protect the rights and interests that hang in the balance and enable the upcoming Derby to proceed as it should, with all qualified horses racing and the very best horse winning.

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For these reasons, and those in Zedan's RAP 20 motion, Zedan respectfully requests that a member of the Court grant immediate relief under RAP 20(D) allowing Muth to compete in the upcoming Derby on May 4, 2024. At a minimum, a partial injunction should issue enabling Muth to be stabled under Derby rules at Churchill Downs Race Track by 11:00 a.m. Eastern on Saturday, April 27, 2024. Zedan therefore respectfully requests that a member of this Court enter a temporary injunction permitting Muth to be stabled at Churchill Downs Race Track in time for that hard deadline. Such a temporary injunction will afford a panel of this Court due time to consider and decide Zedan's appeal before the Derby commences on Saturday May 4, 2024.

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Date: April 19, 2024

Respectfully submitted,

/s/ William H. Brammel, Jr.

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**CERTIFICATE OF SERVICE**

I certify that on April 19, 2024, a copy of the above was electronically filed with

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