

MEMORANDUM DECISION

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PRO SE APPELLANT
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IN THE COURT OF APPEALS OF INDIANA

Layla Cristina Mihuti,
Appellant-Plaintiff,

v.

Simona Mihuti, et al.,
Appellees-Defendants.

January 24, 2024

Court of Appeals Case No.
23A-CT-369

Appeal from the Hendricks Circuit
Court

The Honorable Robert Freese,
Judge

Trial Court Cause No.
32D01-2104-CT-000052

Memorandum Decision by Judge May
Chief Judge Altice and Judge Felix concur.

May, Judge.

[1] Layla Cristina Mihuti (“Layla”) appeals following the trial court’s orders denying her motion to file a second amended complaint, denying her motion for a change of judge pursuant to Trial Rule 76(c), and granting judgment on the pleadings to Simona Mihuti (“Simona”). Simona asserts the trial court did not err in issuing the challenged orders and contends she is entitled to an award of appellate attorney fees pursuant to Appellate Rule 66(E). We affirm the trial court’s rulings and remand the matter for the trial court to determine an appropriate amount of appellate attorney fees to award Simona.

Facts and Procedural History

[2] Layla is the widow of Bogdan Mihuti (“Bogdan”), who died in December 2015. Bogdan’s brother, Ovidiu Mihuti, initially served as the personal representative of Bogdan’s estate, which was administered by the Hendricks Superior Court under *In re: the Estate of Bogdan T. Mihuti*, 32D05-1512-ES-000256. In February 2016, the probate court removed Ovidiu Mihuti as personal representative and appointed Elizabeth Ruh as the successor personal representative. The probate court then held a trial on Layla’s claims that Ovidiu Mihuti had improperly administered Bogdan’s estate resulting in the loss of Layla’s personal property. Both Simona, who is Ovidiu Mihuti’s wife, and Mariana Raibulet testified adversely to Layla at that trial. Following the trial, the probate court entered a judgment for the benefit of Layla and against Ovidiu Mihuti in the amount of \$42,546.99 plus an attorney fee award of \$11,637.36. Layla believed the probate court undervalued her claims and appealed the judgment. We

subsequently affirmed the probate court. *See Matter of Estate of Mihuti*, 19A-ES-1945, 2020 WL 1882862 (Ind. Ct. App. April 16, 2020), *trans. denied*.

[3] On April 27, 2021, Layla filed the instant action alleging claims against Simona, Mariana Raibulet, and Mariana Raibulet’s husband, Ovidiu Raibulet. Layla was unable to perfect service on Simona, but the Raibulets were served and filed an answer to Layla’s complaint on July 26, 2021. The Raibulets then filed a motion for judgment on the pleadings. Layla moved for leave to file an amended complaint, and the trial court granted Layla leave to file an amended complaint on October 21, 2021. The amended complaint asserted:

8. Simona Mihuti provided knowingly false testimony in The Matter of The Supervised Estate of Bogdan Mihuti (“the Estate Matter”), first in the form of a knowingly false affidavit which formed the basis of an attempt by Ovidiu Mihuti to exclude Layla Mihuti from inheritance from the estate. Simona Mihuti later provided knowingly false testimony under oath during the trials of the estate matter.

9. Mariana Raibulet appeared at the Trial of the Estate Matter in November 2018 and knowingly provided false testimony under oath.

10. As a result of the knowingly false testimony presented by Simona Mihuti and Mariana Raibulet, Layla Mihuti was forced to incur attorneys’ fees both of her own and on behalf of the Estate of Bogdan Mihuti, and was unable to recover the full amount of damages caused by Ovidiu Mihuti’s conversion.

* * * * *

15. Ovidiu and Simona Mihuti entered the decedent's home accompanied by a Deputy Sheriff and removed several items of personal property which they took to the home of Mariana and Ovidiu Raibulet. Several items of property belonging to Layla and/or Bogdan Mihuti, including their cat, were taken to the Raibulet's [sic] residence. It is believed that some of the items of personal property remain in the custody and/or possession of Mariana and Ovidiu Raibulet.

(Appellee's App. Vol. II at 15-16) (internal footnote omitted).

[4] The Raibulets answered Layla's amended complaint and filed a renewed motion for judgment on the pleadings. The trial court granted the Raibulets' motion for judgment on the pleadings, and Layla appealed only the portion of the trial court's order that entered judgment in favor of the Raibulets on Layla's fraud claim. We affirmed the trial court and held the Raibulets were entitled to judgment on the pleadings because "Layla's fraud claim against Mariana [was] an impermissible collateral attack on Mariana's testimony in the estate case." *Mihuti v. Raibulet*, 22A-CT-391, 2022 WL 2977047 at **2 (Ind. Ct. App. July 28, 2022), *trans. denied*.

[5] Layla eventually served Simona, and an attorney entered his appearance for Simona on October 27, 2022. On that same day, Layla filed a motion for leave to file a second amended complaint. In the motion, Layla argued:

The Second Amended Complaint is provided to avoid the characterization presented by the Raibulet Defendants that the instant action was somehow a collateral attack on the judgment of the probate court in the Matter of the Estate of Bogdan Mihuti, Deceased. ... The Second Amended Complaint alleges

that Simona Mihuti engaged in a lengthy course of fraudulent conduct spanning several years, which is entirely independent of any potentially perjured testimony offered in a different legal proceeding. It was necessary to clarify that the conduct of Defendant for which recovery is now sought is her lengthy course of fraud beginning in Fall 2015 and continuing through at least Fall 2018. To the extent her perjured testimony is relevant, it is as one detail in her overarching course of fraudulent conduct, but it does not by itself provide a basis for the cause of action.

(Appellee’s App. Vol. II at 22-23.) Simona filed a response in opposition to Layla’s motion. Simona asserted Layla was attempting to engage in “piecemeal litigation” by seeking to further amend her complaint and that Layla “failed to identify a legitimate basis” for doing so. (*Id.* at 25-26.) Simona also argued that allowing Layla to file a second amended complaint was futile because the proposed second amended complaint did not allege a prima facie claim of fraud. The trial court denied Layla’s motion for leave to file a second amended complaint on November 15, 2022.

[6] On November 16, 2022, Layla filed a motion for change of judge, and the trial court denied Layla’s motion the next day. On December 16, 2022, Simona filed both her answer and a motion for judgment on the pleadings. Simona asserted in her motion for judgment on the pleadings that Layla’s complaint was “an impermissible collateral attack on the final judgment in the Matter of the Estate of Bogdan T. Mihuti” because “adverse witnesses cannot be the target of fraud claims based upon their testimony, and the final accounting of a probate court may not be collaterally attacked through a separate action.” (*Id.* at 38-39.) Layla filed a response in opposition to Simona’s motion on January

16, 2023. The trial court then granted Simona’s motion for judgment on the pleadings on January 19, 2023.

Discussion and Decision

[7] Initially, we note Layla proceeds on appeal pro se. We hold pro se litigants to the same standard as trained attorneys and afford them no inherent leniency because of their self-represented status. *Zavodinik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). Pro se litigants “are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.” *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016), *reh’g denied*. “One of the risks that a [litigant] takes when he decides to proceed pro se is that he will not know how to accomplish all of the things that an attorney would know how to accomplish.” *Smith v. Donahue*, 907 N.E.2d 553, 555 (Ind. Ct. App. 2009), *trans. denied, cert. denied*, 558 U.S. 1074 (2009).

1. Motion to File Second Amended Complaint

[8] Layla argues the trial court erred in denying her motion to file a second amended complaint. Indiana Trial Rule 15(A) provides that after a responsive pleading has been served, “a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given when justice so requires.” We review a trial court’s order denying a plaintiff’s motion for leave to amend a complaint for an abuse of discretion. *Kelley v. Vigo Cnty. Sch. Corp.*, 806 N.E.2d 824, 829 (Ind. Ct. App. 2004), *reh’g denied, trans. denied*. An abuse of discretion “occurs when the trial court’s decision is clearly against

the logic and effect of the facts and circumstances before the court or when the trial court has misinterpreted the law.” *Rusnak v. Brent Wagner Architects*, 55 N.E.3d 834, 842 (Ind. Ct. App. 2016), *trans. denied*. We consider a number of factors in determining whether a trial court abused its discretion by denying a motion to amend the complaint, including “undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiency by amendment previously allowed, undue prejudice to the opposing party by virtue of the amendment, and futility of the amendment.” *Palacios v. Kline*, 566 N.E.2d 573, 575 (Ind. Ct. App. 1991).

- [9] Layla asserts Simona would not have been prejudiced by allowing her to file a second amended complaint because Simona had yet to file an answer before Layla sought leave to file the second amended complaint. However, even absent prejudice, a trial court may properly deny a motion for leave to amend if the amendment would be futile. *See, e.g., Kelley*, 806 N.E.2d at 830 (holding plaintiff was not entitled to file a third amended complaint because the amendment would have been futile). In Layla’s proposed second amended complaint, she alleged Simona falsely accused her of marital infidelity during Simona’s testimony at the 2018 trial related to Bogdan’s estate. Layla also asserted that she “relied upon Simona Mihuti’s representations of friendship and ‘sisterhood’” to share information with Simona that Simona later used against Layla to “financially benefit from the death of Bogdan Mihuti.” (Appellant’s App. Vol. II at 32.) In addition, Layla accused Simona of making

false representations to law enforcement to gain access to Bogdan Mihuti's residence following his death.

[10] Simona argues that “decades of Indiana case law expressly forbid an action for fraud against an adverse witness based upon the witness’s testimony in another proceeding,” (Appellee’s Br. at 24), and directs us to *Loomis v. Ameritech Corp.*, 764 N.E.2d 658 (Ind. Ct. App. 2002), *reh’g denied, trans. denied*. In *Loomis*, the plaintiffs filed suit against a defendant alleging the defendant committed misconduct in a previous personal injury lawsuit. *Id.* at 661. We held that the plaintiffs failed to state a claim upon which relief could be granted because their suit was an impermissible collateral attack on another judgment. *Id.* at 665.

We explained:

It has long been the law in Indiana that a litigant defeated in a tribunal of competent jurisdiction may not maintain an action for damages against his adversary or adverse witnesses on the ground the judgment was obtained by false and fraudulent practices or by false and forced evidence. The courts will not encourage continuous litigation. If a judgment is procured by fraud the proper procedure is to attack the judgment in a direct proceeding and not by way of collateral attack.

Id. at 664 (internal citations and quotation marks omitted). Thus, an aggrieved party in one lawsuit may not turn around and sue a witness on the basis that the witness provided false testimony. If we were to hold otherwise, it “would encourage and multiply vexatious suits and lead to interminable litigation.” *Id.* at 664 (quoting *Dean v. Kirkland*, 23 N.E.2d 180, 188 (Ill. Ct. App. 1939)).

[11] Even though Layla characterizes her proposed second amended complaint as alleging that Simona engaged in a course of fraudulent conduct above and beyond giving false testimony, the proposed second amended complaint still seeks to hold Simona liable for her actions related to the administration of Bogdan's estate, which was the subject of the litigation before the probate court. Therefore, the trial court did not abuse its discretion when it denied Layla's motion for leave to file a second amended complaint because allowing the amendment would have been futile. *See, e.g., Gordon v. Purdue Univ.*, 862 N.E.2d 1244, 1253 (Ind. Ct. App. 2007) (holding trial court did not abuse its discretion in denying plaintiff's motion for leave to file a second amended complaint because allowing the amended complaint would have been futile).

2. Motion for Change of Judge

[12] Layla also asserts the trial court was required to automatically grant her motion for change of judge. In contrast, Simona argues the trial court was not required to grant Layla's motion because it was untimely. Whether Layla's motion was timely filed "presents a purely legal question involving construction of the Indiana Trial Rules that we review de novo." *Johnson Cnty. Rural Elec. Membership Corp. v. S. Cent. Ind. Rural Elec. Membership Corp.*, 883 N.E.2d 141, 143 (Ind. Ct. App. 2008).

[13] Indiana Trial Rule 76(c) provides in relevant part:

In any action except criminal no change of judge or change of venue from the county shall be granted except within the time herein provided. Any such application for change of judge (or

change of venue) shall be filed not later than ten [10] days after the issues are first closed on the merits.

“Normally, the issues are first closed on the merits when the defendant files an answer. In multiple-defendant lawsuits, the issues are first closed with the filing of the first answer on the merits.” *Lake Cnty. Juvenile Det. Ctr. v. J.M.D.*, 704 N.E.2d 149, 150 (Ind. Ct. App. 1999) (internal citation omitted). It is the filing of the original complaint and the original answer on the merits that determines whether a motion for change of judge was timely. *Matter of Niemiec’s Estate*, 435 N.E.2d 999, 1001 n.2 (Ind. Ct. App. 1982). Here, the Raibulets filed an answer to Layla’s complaint and served Layla with their answer on July 26, 2021, over a year before Layla filed her motion for change of judge. Because the Raibulets served Layla with their answer more than ten days before Layla filed her motion for change of judge, Layla’s motion was untimely, and trial court was not required to automatically grant it.¹ *See, e.g., Mann v. Russell’s Trailer Repair, Inc.*, 787 N.E.2d 922, 926 (Ind. Ct. App. 2003) (holding motion for change of judge was untimely), *reh’g denied, trans. denied*.

¹ Layla asserts *Lake Cnty. Juvenile Det. Ctr.* stands for the proposition that “in a circumstance in which a co-Defendant fails to file an Answer within a reasonable time, the period of time for a motion to be timely filed under Rule 76(B) is tolled.” (Appellant’s Br. at 10.) However, that is not what the case holds. In *Lake Cnty. Juvenile Det. Ctr.*, we held the defendant’s motion for change of venue was timely because it was filed within ten days of when the defendant was first served with an answer from a co-defendant even though it was filed more than ten days after another co-defendant filed its answer. 704 N.E.2d at 150.

3. Motion for Judgment on the Pleadings

- [14] In addition, Layla claims the trial court erred when it granted Simona’s motion for judgment on the pleadings. We review a trial court’s order granting a motion for judgment on the pleadings de novo. *Nicholson v. Lee*, 120 N.E.3d 192, 194 (Ind. Ct. App. 2019), *trans. denied*. “A motion for judgment on the pleadings tests the sufficiency of a claim presented in the pleadings and should be granted only where it is clear from the face of the complaint that under no circumstances could relief be granted.” *Id.*
- [15] Layla’s first amended complaint, which was the operative complaint when Simona filed her motion for judgment on the pleadings, alleged that Simona provided false testimony in the trial over Bogdan’s estate and that Simona was involved in taking property from Bogdan’s house after his death. However, as we explained above in our discussion of the trial court’s denial of Layla’s motion to file a second amended complaint, such claims represent an impermissible collateral attack on a previous judgment, and therefore, we hold the trial court did not err in granting Simona’s motion for judgment on the pleadings.² *See, e.g., Loomis*, 764 N.E.2d at 665 (holding defendant was entitled

² Layla also asserts that “[t]he trial court’s consistent pattern of rapid adjudications with no explanation of its reasoning and failing to take into account the established law of Indiana raises significant Due Process concerns.” (Appellant’s Br. at 19) (emphases removed). Layla notes that Simona’s motion for judgment on the pleadings was granted by a summary order two days after Layla filed her response to the motion and without the trial court holding an oral argument. However, there is no absolute right to have an oral argument on a motion before the trial court. *State ex rel. Mass Transp. Auth. of Greater Indianapolis v. Indiana Revenue Bd.*, 254 N.E.2d 1, 4 (Ind. 1969) (“Certainly the trial court might deem such oral argument helpful but it was not incumbent on same, to grant argument as a matter of right.”). In addition, the trial court is not

to judgment on the pleadings because the plaintiffs' complaint was an impermissible collateral attack on another judgment).

4. Simona's Request for Appellate Attorney's Fees

[16] Having addressed Layla's arguments on appeal, we next address Simona's request that we award her appellate attorney's fees. Indiana Appellate Rule 66(E) governs the award of damages for frivolous or bad faith filings, and it states: "The Court may assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees. The Court shall remand the case for execution." We exercise this power to award appellate attorney fees "with extreme restraint" because of its "potential chilling effect on the exercise of the right to appeal." *Bessolo v. Rosario*, 966 N.E.2d 725, 734 (Ind. Ct. App. 2012), *trans. denied*. We will award appellate attorney fees only "against an appellant who in bad faith maintains a wholly frivolous appeal." *Harness v. Schmitt*, 924 N.E.2d 162, 168 (Ind. Ct. App. 2010). "A strong showing is required to justify an award of appellate damages, and the sanction is not imposed to punish mere lack of merit, but something more egregious." *Id.* "Our discretion to award attorney fees under Appellate Rule 66(E) is limited to instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness,

obligated to explain its reasoning when ruling on a motion for judgment on the pleadings. *See, e.g., Eggers v. CSX Transp., Inc.*, 198 N.E.3d 688, 692 n.2 (Ind. Ct. App. 2022) (stating a trial court has no obligation to explain its reasoning when ruling on a motion for summary judgment and noting "our review of the court's judgment is de novo regardless of whether the trial court explained itself").

or purpose of delay.” *Poulard v. Laporte Cnty. Election Bd.*, 922 N.E.2d 734, 737 (Ind. Ct. App. 2010).

[17] An award of attorney fees is appropriate if the appellant demonstrates either substantive or procedural bad faith. *Harness*, 924 N.E.2d at 168. Substantive bad faith occurs when “the appellant’s contentions and argument are utterly devoid of all plausibility.” *Id.* at 169. Here, Layla’s claims against Simona suffered from the same fatal defects as Layla’s claims against the Raibulets. Nevertheless, Layla continued to pursue her claims against Simona after we affirmed the Raibulets’ motion for judgment on the pleadings. That pursuit was the epitome of frivolousness. It achieved nothing other than the needless expenditure of time and resources by Simona and the courts, and it served no other purpose than to harass Simona. *See Poulard*, 922 N.E.2d at 738 (“Poulard has maintained this cause of action in a manner calculated to require the needless expenditure of time and resources by the [defendant], the trial court, and this Court. In short, Poulard’s appeal was brought in bad faith and for purposes of harassment.”). Moreover, Layla’s argument that the trial court erred in denying her motion for a change of judge rested on a mischaracterization of our holding in *Lake Cnty. Juvenile Det. Ctr. v. J.M.D.*, 704 N.E.2d 149, and was wholly without merit. Therefore, we hold Simona should receive attorney fees for having to respond to Layla’s appeal, and we remand the matter back to the trial court to determine the appropriate amount of fees to

award.³ *See, e.g., Kozlowski v. Lake Cnty. Plan Comm'n*, 927 N.E.2d 404, 413 (Ind. Ct. App. 2010) (holding defendants were entitled to appellate attorney fees when the plaintiff “simply continued to raise issues without merit” after previous appeals were unsuccessful), *trans. denied*.

Conclusion

[18] Layla’s suit against Simona constituted an impermissible collateral attack on a previous judgment, and therefore, we affirm the trial court’s orders denying Layla’s motion for leave to file a second amended complaint and granting Simona’s motion for judgment on the pleadings. We also affirm the trial court’s denial of Layla’s motion for change of judge because the motion was untimely. In addition, we remand the matter back to the trial court to calculate the appropriate amount of attorney fees to award Simona because of Layla’s substantive bad faith.

[19] Affirmed and remanded.

Altice, C.J., and Felix, J., concur.

³Simona also asserts that Layla engaged in procedural bad faith, but we need not opine on that question given our holding that Simona is entitled to attorney fees because of Layla’s substantive bad faith. *See, e.g., Kane v. State*, 976 N.E.2d 1228, 1233 n.1 (Ind. 2012) (deciding only the dispositive issue and declining to address appellant’s additional argument).