

## MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Layla Christina Mihuti,  
*Appellant-Plaintiff,*

v.

Mariana Raibulet and Ovidiu  
Raibulet,  
*Appellee-Defendant.*

July 28, 2022

Court of Appeals Case No.  
22A-CT-391

Appeal from the Hendricks  
Superior Court

The Honorable Robert W. Freese,  
Judge

Trial Court Cause No.  
32D01-2104-CT-52

**Mathias, Judge.**

[1] Layla Christina Mihuti appeals the trial court's entry of judgment on the pleadings in favor of Mariana Raibulet and Ovidiu Raibulet. Layla raises two issues for our review, which we consolidate and restate as whether the trial

court erred when it entered judgment on the pleadings in favor of the Raibulets on Layla’s claim for fraud.<sup>1</sup> We affirm.

## **Facts and Procedural History**

[2] Layla is the widow of Bogdan Mihuti, who died in 2015. Following Bogdan’s death, in December 2015, Bogdan’s brother, Ovidiu Mihuti, briefly served as the personal representative of Bogdan’s estate, which was administered by the Hendricks Superior Court. In February 2016, the probate court removed Ovidiu as the personal representative. The probate court held a trial on Layla’s claim against Bogdan’s estate in 2018. Mariana Raibulet testified adversely to Layla at that trial.

[3] In April 2021, Layla filed her complaint against the Raibulets. The Raibulets moved for judgment on the pleadings, and the trial court permitted Layla to file an amended complaint in response. Layla filed an amended complaint, in which she alleged in relevant part as follows:

3. [The Raibulets] are residents of Hendricks County . . . .

\* \* \*

5. Ovidiu Mihuti is the brother of Bogdan . . . and served briefly as Personal Representative of the Estate . . . . Although Elizabeth Ruh was substituted as Personal Representative in February

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<sup>1</sup> Layla does not challenge the trial court’s entry of judgment on the pleadings on her claims of damage to real property and recovery of personal property.

2016, she did not take possession of the assets of the estate, including the keys to the house, until sometime on or after May 4, 2016. During the period of time between February and at least May 4, 2016, Ovidiu Mihuti maintained custody and control of the assets of the Estate . . . .

6. Sometime prior to May 4, 2016, Ovidiu Mihuti removed significant assets and personal property from the former residence of Bogdan . . . which included . . . personal property belonging to Layla Mihuti . . . .

\* \* \*

#### COUNT I: FRAUD

\* \* \*

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 . . . , Layla Mihuti was forced to incur attorneys' fees . . . and was unable to recover the full amount of damages caused by Ovidiu Mihuti's conversion.

Appellant's App. Vol. 2, pp. 15-16.

[4] Following Layla's amended complaint, the Raibulets renewed their motion for judgment on the pleadings. The trial court held a hearing on the renewed motion. Following the hearing, the court granted the Raibulets' motion for judgment on the pleadings. This appeal ensued.

## Discussion and Decision

- [5] Layla appeals the trial court’s entry of judgment on the pleadings. As our Supreme Court has made clear:

A motion for judgment on the pleadings under [Trial Rule 12\(C\)](#) tests the sufficiency of a claim or defense 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.” [Veolia Water Indianapolis, LLC v. National Trust Ins. Co.](#), 3 N.E.3d 1, 5 (Ind. 2014) (quoting [Murray v. City of Lawrenceburg](#), 925 N.E.2d 728, 731 (Ind. 2010)). Because we “base our ruling solely on the pleadings”, *id.* “we accept as true the material facts alleged in the complaint”. *Id.* When, as here, a 12(C) motion essentially argues the complaint fails to state a claim upon which relief can be granted, we treat it as a 12(B)(6) motion. [Gregory & Appel, Inc. v. Duck](#), 459 N.E.2d 46, 49 (Ind. Ct. App. 1984). Like a trial court’s 12(B)(6) ruling, we review a 12(C) ruling de novo. [Veolia Water](#), 3 N.E.3d at 5.

[KS&E Sports v. Runnels](#), 72 N.E.3d 892, 898 (Ind. 2017).

- [6] Layla asserts that the trial court erred when it entered judgment on the pleadings against her on her claim for fraud. On that claim, Layla alleged that Mariana had knowingly provided false testimony against Layla in the trial on Bogdan’s estate in the probate court. But Indiana law has long prohibited such collateral attacks:

“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.” [Anderson v. Anderson](#),

399 N.E.2d 391, 399 (Ind. Ct. App. 1979). “The courts will not encourage continuous litigation.” *Hermon v. Jobes*, 209 Ind. 196, 198 N.E. 316, 319 (1935). 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. *Anderson*, 399 N.E.2d at 399–400.

*Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 664 (Ind. Ct. App. 2002), *trans. denied*.

[7] Layla’s fraud claim against Mariana is an impermissible collateral attack on Mariana’s testimony in the estate case. Thus, the trial court properly entered judgment on the pleadings for the Raibulets on Count I of Layla’s complaint, and we affirm the trial court’s judgment.

[8] Affirmed.

Brown, J., and Molter, J., concur.