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SUMMARY  
October 17, 2024

**2024COA115**

**No. 24CA0192, *Rios de Martinez v. Landaverde* — Family Law — Dissolution; Real Property — Colorado Uniform Fraudulent Transfer Act (CUFTA) — Transfers Fraudulent as to Present and Future Creditors**

A division of the court of appeals holds, as a matter of first impression in Colorado, that one spouse may bring an action against the other spouse (and others) alleging a fraudulent transfer in violation of the Colorado Uniform Fraudulent Transfer Act where (1) the spouse who transferred the property had reason to know at the time of the transfer that marital dissolution proceedings were imminent (or dissolution proceedings were ongoing) and (2) the transfer bears sufficient indicia of fraud.

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Court of Appeals No. 24CA0192  
Mesa County District Court No. 23CV30418  
Honorable Gretchen B. Larson, Judge

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Juana Rios de Martinez,

Plaintiff-Appellant,

v.

Alfredo Jose Martinez Landaverde, Martinez Family Corporation, a Colorado corporation, Martinez Investments LLC, a Colorado limited liability company, Nivia Hernandez, and Tessa Arce,

Defendants-Appellees.

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JUDGMENT REVERSED AND CASE  
REMANDED WITH DIRECTIONS

Division I  
Opinion by JUDGE J. JONES  
Sullivan and Taubman\*, JJ., concur

Announced October 17, 2024

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Coleman, Quigley & Foster, LLC, Isaiah Quigley, Stuart R. Foster, Grand Junction, Colorado, for Plaintiff-Appellant

James W. Giese, P.C., James W. Giese, Grand Junction, Colorado, for Defendants-Appellees Alfredo Jose Martinez Landaverde, Martinez Family Corporation, a Colorado corporation, and Martinez Investments LLC, a Colorado limited liability company

Thomas C Volkmann PC, Thomas C. Volkmann, Grand Junction, Colorado, for Defendants-Appellees Nivia Hernandez and Tessa Arce

\*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2024.

¶ 1 Under the Colorado Uniform Fraudulent Transfer Act (CUFTA), a transfer of an asset made with actual intent to hinder, delay, or defraud a creditor is fraudulent, and a court may impose a variety of remedies, including setting aside the transfer. §§ 38-8-105(1)(a), -108, C.R.S. 2024. In this case, we consider whether a wife who has petitioned for dissolution of her marriage may maintain a cause of action against her husband and others under CUFTA as her husband’s “creditor” based on allegations that he transferred property in anticipation of the divorce to deprive her of an equitable distribution of the marital estate. We conclude that she may.<sup>1</sup>

¶ 2 Plaintiff, Juana Rios de Martinez (wife), appeals the district court’s judgment dismissing, for failure to state a claim, her CUFTA and civil conspiracy claims against the defendants, Alfredo Jose Martinez Landaverde (husband), Martinez Family Corporation, Martinez Investments LLC, Nivia Hernandez, and Tessa Arce. We reverse the judgment and remand the case to the district court to reinstate wife’s complaint.

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<sup>1</sup> Our holding in this case applies regardless of the genders of the respective spouses.

## I. Background

¶ 3 Wife married husband in 2001. Their dissolution proceeding, initiated by wife in April 2023, is still pending.

¶ 4 In October 2023, wife filed a complaint in a separate civil action, asserting two claims against husband, two of husband’s children from a prior marriage, an entity allegedly controlled by the children, and an entity allegedly controlled by husband.

¶ 5 Wife’s first claim asserts that husband violated CUFTA by “fraudulently transferring certain assets out of his personal name and from the entities he controlled . . . to his children or entities his children controlled to avoid disposition in a dissolution of marriage proceeding.” The complaint identifies three parcels of land — two of which husband purchased before the marriage, and the third in which he obtained an ownership interest “[a]t some point” — and alleges that husband conveyed the properties via quitclaim deeds for no consideration in 2017 and 2019. He did so, according to the complaint, “[d]uring [wife’s] prior threats and then actual filing [for] the dissolution of the parties’ marriage.” (Wife previously petitioned for dissolution of the marriage in November 2019, but the district

court dismissed her petition in January 2020 because she and husband had reconciled.)

¶ 6 Wife's second claim asserts that the defendants engaged in a civil conspiracy "to accomplish the unlawful goal of transferring [the three properties] for purposes of avoiding the disposition of marital property and other assets during a dissolution of marriage proceeding in violation of CUFTA."

¶ 7 The defendants moved to dismiss wife's complaint for failure to state a claim under C.R.C.P. 12(b)(5), asserting that wife doesn't have a right to payment from husband because the properties were husband's separate properties that he owned before the marriage, and, to the extent wife has an equitable interest in the properties upon divorce, she should raise such a claim in the dissolution proceeding. The defendants also asserted that the statute of limitations bars wife's claims as to one of the properties.

¶ 8 The district court granted the defendants' motion to dismiss, reasoning that the complaint doesn't allege sufficient facts from which the court could find that (1) wife is a creditor within the meaning of CUFTA; (2) husband's transfers were fraudulent; and (3) wife has a plausible ownership interest in the properties.

Because the court found that the complaint fails to state a plausible claim for relief under CUFTA, it also dismissed wife’s civil conspiracy claim against the defendants.

## II. Discussion

¶ 9 Wife contends that the district court erred by (1) misapplying the standards of review governing the defendants’ motion to dismiss; (2) concluding that she failed to plead facts sufficient to support her CUFTA and civil conspiracy claims; (3) not considering the affidavit she submitted with her response to the defendants’ motion to dismiss; and (4) ruling that the defendants weren’t required to confer with her attorney before filing their motion to dismiss. Because we agree with wife’s second contention, we don’t address the others.

### A. Standard of Review and Applicable Law

¶ 10 We review de novo a district court’s dismissal for failure to state a claim under Rule 12(b)(5), applying the same standards as the district court. *Houser v. CenturyLink, Inc.*, 2022 COA 37, ¶ 11. In doing so, we must accept as true the complaint’s factual allegations. *Id.* But “we are not required to accept as true legal conclusions that are couched as factual allegations.” *Denver Post*

*Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). Dismissal under Rule 12(b)(5) is appropriate if the complaint’s factual allegations fail to both raise a right to relief above the speculative level and provide plausible grounds for relief. *Warne v. Hall*, 2016 CO 50, ¶¶ 9, 24.

¶ 11 Determining whether wife’s complaint survives the defendants’ motion to dismiss requires us to interpret several provisions of CUFTA. “Statutory interpretation is a question of law that we review de novo.” *Leverage Leasing Co. v. Smith*, 143 P.3d 1164, 1166 (Colo. App. 2006). When interpreting a statute, “our obligation is not to make policy decisions but rather to give full effect to the legislative intent.” *Farmers Ins. Exch. v. Bill Boom Inc.*, 961 P.2d 465, 469 (Colo. 1998); *see also Leverage Leasing Co.*, 143 P.3d at 1166 (“We accept the intent of the drafters of a uniform act as the General Assembly’s intent when it has adopted such an act.”). In doing so, we apply statutory terms according to their plain and ordinary meanings. *Allman v. People*, 2019 CO 78, ¶ 13. “[W]hen the legislature defines a term in a statute, that definition governs.” *Farmers Ins. Exch.*, 961 P.2d at 470.

¶ 12 CUFTA derives from the Uniform Fraudulent Transfer Act (Nat’l Conf. of Comm’rs on Unif. State L. 1984) (UFTA), which, in

turn, derives from the Uniform Fraudulent Conveyance Act (Nat'l Conf. of Comm'rs on Unif. State L. 1918) (UFCA). *Leverage Leasing Co.*, 143 P.3d at 1166.<sup>2</sup> Accordingly, we may look to cases interpreting those acts or other states' similar versions of those acts for assistance in interpreting CUFTA. *CB Richard Ellis, Inc. v. CLGP, LLC*, 251 P.3d 523, 529 (Colo. App. 2010); see § 38-8-112, C.R.S. 2024 (“[CUFTA] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article.”).

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<sup>2</sup> Section 38-8-105(1)(a), C.R.S. 2024, of CUFTA mirrors section 4(a)(1) of the UFTA. Section 7 of the UFCA, from which section 4 of the UFTA is derived, provides as follows:

Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors.

UFCA § 7. For our purposes, there are no material differences between the relevant provisions of CUFTA, the UFTA, and the UFCA.

## B. Analysis

### 1. CUFTA Claim

¶ 13 Wife’s complaint alleges that husband made fraudulent transfers under section 38-8-105(1)(a) of CUFTA, which provides as follows:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (a) With actual intent to hinder, delay, or defraud any creditor of the debtor . . . .

¶ 14 The district court concluded that wife’s complaint fails to state a plausible claim for relief under CUFTA in part because it doesn’t allege sufficient facts showing that wife is a creditor within the meaning of section 38-8-105(1)(a). We disagree with that conclusion.

¶ 15 A creditor-debtor relationship is necessary to establish a fraudulent transfer under CUFTA. CUFTA defines “creditor” as “a person who has a claim,” § 38-8-102(5), C.R.S. 2024, and “claim” as “a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,

unmatured, disputed, undisputed, legal, equitable, secured, or unsecured,” § 38-8-102(3).

¶ 16 Accordingly, to prevail on her CUFTA claim, wife must show that she has a right to payment from husband that existed when he made the allegedly fraudulent transfers.

¶ 17 Wife asserts that she has a “right to payment of the appreciated or other determined value of the properties or the disposition of the properties that would otherwise have been accorded to her in the dissolution of marriage if the properties [had] remained in the marital estate.” *See* § 14-10-113(4), C.R.S. 2024 (the appreciation in a spouse’s separate property during the marriage is marital property subject to division upon divorce). In other words, wife reasons that she is a creditor under CUFTA because her claim to an equitable distribution of the marital estate — which includes any appreciation in the values of the properties at issue during the marriage — on divorce, though not reduced to judgment in a divorce proceeding, arose when she threatened to divorce husband.

¶ 18 Though no Colorado case addresses whether, for purposes of section 38-8-105(1)(a), one spouse may become a creditor of the

other when contemplating divorce, courts in other jurisdictions interpreting analogous uniform fraudulent transfer statutes have done so. In *Bradford v. Bradford*, 1999 UT App 373, ¶¶ 3-4, for example, the property at issue was husband’s premarital home, which he had transferred into joint tenancy with wife four years into their marriage. Seven years later, without notifying husband and only weeks after he had threatened to divorce her, wife executed a quitclaim deed transferring her interest in the home to her son. *Id.* at ¶¶ 6-7. Wife’s transfer precipitated both a fraudulent conveyance action under Utah’s UFTA and a divorce action, which were tried together. *Id.* at ¶ 1. On appeal, the Utah Court of Appeals upheld the trial court’s determination that husband was wife’s creditor within the meaning of the UFTA and declared the transfer void. *Id.* at ¶ 16. It reasoned that “[husband’s] claim to the house — although not reduced to judgment in a divorce proceeding — had arisen through recent threats of divorce,” given that wife’s transaction would have defeated husband’s recovery in the divorce suit, which wife contemplated when she transferred her interest in the home to her son. *Id.* The court noted that this reasoning is consistent with the requirement “to construe the [UFTA] liberally ‘to

reach all artifices and evasions designed to rob the Act of its full force and effect” and to “liberally and beneficially expound[] [the UFTA] to suppress the fraud.” *Id.* (citations omitted).

¶ 19 As best we can tell, in cases from other jurisdictions involving facts similar to those in *Bradford* and this case, courts unanimously agree that a spouse may qualify as a creditor under the UFTA to obtain relief from a fraudulent transfer intended to evade an equitable distribution of the marital estate. See *Hernandez-Velazquez v. Hernandez*, 136 N.E.3d 1130, 1137 (Ind. Ct. App. 2019); *Bak v. Bak*, 511 N.E.2d 625, 634-35 (Mass. App. Ct. 1987); *Henry v. Soto-Henry*, 936 N.Y.S.2d 84, 85 (App. Div. 2011); *Adamson v. Adamson*, 541 P.2d 460, 466 (Or. 1975); *Caldwell v. Caldwell*, 92 N.W.2d 356, 362 (Wis. 1958); see also *Foisie v. Worcester Polytechnic Inst.*, 967 F.3d 27, 46 (1st Cir. 2020) (explaining that, under Massachusetts’ and Connecticut’s versions of the UFTA, although marriage alone isn’t sufficient to render spouses creditors of each other, transfers made while divorce proceedings are imminent may be set aside as fraudulent); *Reed v. Reed*, 763 N.W.2d 686, 692 nn.8-10 (Neb. 2009) (collecting cases from other jurisdictions holding that a former spouse with an

equitable distribution claim may set aside a fraudulent transfer under those jurisdictions' versions of the UFTA or UFCA, and identifying cases in which the courts specifically held that the former spouse was a creditor under the relevant statute); *cf.* *Buchanan v. Buchanan*, 585 S.E.2d 533, 535 (Va. 2003) (under Virginia's fraudulent conveyance statute, wife was an "other person" who "may be lawfully entitled" to payment from husband even though husband conveyed the property before he filed for divorce and before wife's marital interest in the property was determined in an equitable distribution award (quoting Va. Code Ann. § 55-80 (West 2003))); *see generally* Brett R. Turner, *Division of Third-Party Property in Divorce Cases*, 18 J. Am. Acad. Matrim. Laws. 375, 417 n.124 (2003) ("It is well settled that a spouse qualifies as a creditor for the purpose of fraudulent conveyance statutes, even if the conveyance is made before a divorce action is filed.").

¶ 20 Similar to the court in *Bradford*, these courts reason that a spouse may have a claim to an equitable distribution of assets in a pending dissolution case (and perhaps to maintenance), which arises when divorce is imminent, even though such a claim may be unliquidated or unmatured. *See, e.g., Henry*, 936 N.Y.S.2d at 85

(recognizing that, as in Colorado, appreciation in the value of separate property during the marriage is marital property and that a spouse may assert a fraudulent conveyance claim when, in anticipation of divorce, a spouse transfers such property intending to deprive the other of the “potential equitable share”); *Caldwell*, 92 N.W.2d at 362 (transfer to avoid a payment of support or to “escape or minimize the division of property in favor of” the other spouse may be set aside); see also *Du Mont v. Godbey*, 415 N.E.2d 188, 190 (Mass. 1981) (“[W]here a divorce is imminent, a spouse may be a ‘creditor’ under the [UFCA] entitled to complain of conveyances designed to frustrate the right to alimony or assignment of property.”). Recall that under CUFTA, a “claim” need not be liquidated or matured; it may be “unliquidated, . . . contingent, . . . [or] unmatured.” § 38-8-102(3); see *Sands v. New Age Fam. P’ship, Ltd.*, 897 P.2d 917, 920 (Colo. App. 1995) (observing that a person may be a creditor with a right to challenge a fraudulent conveyance though her claim isn’t liquidated or otherwise reduced to judgment).

¶ 21 Guided by these cases, which we find persuasive, CUFTA’s plain language, and section 38-8-112’s mandate that CUFTA “be

applied and construed to effectuate its general purpose to make uniform the law,” we hold that one spouse may become a creditor of the other for purposes of section 38-8-105(1)(a) when the transferring spouse has reason to know that dissolution proceedings are imminent.<sup>3</sup>

¶ 22 Contrary to the defendants’ argument, this conclusion doesn’t render each spouse a creditor of the other during the entirety of the marriage: the spouse’s claim arises only when dissolution proceedings are ongoing or imminent. *See Yacobian v. Yacobian*, 508 N.E.2d 1389, 1389-90 (Mass. App. Ct. 1987) (“Marriage alone . . . does not make a spouse a potential creditor . . . and divorce proceedings do not subject all transfers made during marriage to retrospective scrutiny under [the] statute.”).

¶ 23 Nor, contrary to the defendants’ argument, is this conclusion inconsistent with Colorado case law. Indeed, *Estate of Barnhart*, 574 P.2d 500 (Colo. 1978), on which defendants rely most heavily, supports our conclusion. In that case, the court did hold, as the

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<sup>3</sup> Whether dissolution proceedings were “imminent” at the time of any alleged fraudulent transfer necessarily depends on the particular facts of each case.

defendants contend, that one spouse has the right to transfer his property during the marriage.<sup>4</sup> But the court gave a caveat: “the transaction must be bona fide and not merely colorable.” *Id.* at 503; accord *Scavello v. Scott*, 570 P.2d 1, 2 (Colo. 1977); *Kaladic v. Kaladic*, 589 P.2d 502, 504 (Colo. App. 1978). Put in more contemporary terms, such a transfer is uncontestable unless it is allegedly fraudulent.

¶ 24 To the extent the defendants contend that wife is limited to contesting the transfers under statutes and rules (and related case law) specifically applicable in dissolution proceedings, we disagree. See § 14-10-107(4)(b), C.R.S. 2024 (upon the filing of a dissolution proceeding, the spouses are enjoined from transferring marital property absent consent or court order); C.R.C.P. 16.2(e)(2) (a party in a dissolution proceeding must disclose assets); C.R.C.P. 16.2(e)(5) (sanctions may be imposed for failure to disclose); C.R.C.P. 16.2(e)(10) (misstatements or omissions in disclosures materially affecting the division of assets and liabilities may be

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<sup>4</sup> The transfer at issue in *Estate of Barnhart*, 574 P.2d 500, 502-03 (Colo. 1978), was allegedly intended to deprive the other spouse of her inheritance.

challenged within five years of the final decree); *see also In re Marriage of Jorgenson*, 143 P.3d 1169, 1173-74 (Colo. App. 2006) (a spouse’s dissipation of marital assets in contemplation of divorce may be considered “economic fault” in dividing marital assets). Nothing in CUFTA creates an exception for transfers that ultimately may become relevant in a dissolution proceeding, and we may not engraft one onto the statute. *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 35 (Colo. 2000) (We “should not read a statute to create an exception that the plain language does not suggest, warrant, or mandate.”). Nor do the dissolution-specific statutes and rules, or the cases applying them, suggest that a party to a dissolution proceeding may not bring a CUFTA action.<sup>5</sup>

¶ 25 Applying CUFTA to this case, we turn to wife’s allegations. Her complaint alleges that “[d]uring [wife’s] prior threats and then actual filing of the dissolution of the parties’ marriage,” husband “began fraudulently transferring certain assets out of his personal

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<sup>5</sup> We also observe that under CUFTA, a fraudulent transfer may be unwound, allowing a creditor to seek collection by going after the transferred asset. *See* § 38-8-108, C.R.S. 2024. It isn’t clear whether the dissolution-specific statutes and rules allow such a remedy. We express no opinion on that issue, however.

name and from the entities he controlled . . . to his children or entities his children controlled to avoid disposition in a dissolution of marriage proceeding.” The complaint identifies the properties at issue and the dates of husband’s acquisitions and transfers of these properties and alleges that “[t]he transfers of the foregoing parcels of real property occurred under known threat and in anticipation of [wife] filing for dissolution of marriage from [husband].” These allegations, viewed in the light most favorable to wife, sufficiently allege that wife is husband’s creditor under CUFTA because husband transferred the property — in which wife may claim an equitable interest — when he had reason to know that dissolution proceedings were imminent.

¶ 26 Next, we must examine whether wife’s complaint alleges sufficient facts to show that husband made a fraudulent transfer. As noted, a transfer is fraudulent under section 38-8-105(1)(a) if the debtor made it “[w]ith actual intent to hinder, delay, or defraud any creditor.” Fraudulent intent may be inferred from the presence of certain “badges of fraud,” including, as pertinent to this case, whether (1) “[t]he value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred”; (2)

the debtor disclosed or concealed the transfer; (3) the debtor made the transfer to an insider; and (4) the debtor had been sued or threatened with suit before the transfer was made. § 38-8-105(2)(a), (c), (d), (h); see § 38-8-105 cmts. 5, 6. “While a single badge of fraud may only create suspicion of fraud, several badges of fraud considered together may infer intent to defraud.” *Schempp v. Lucre Mgmt. Grp., LLC*, 75 P.3d 1157, 1161 (Colo. App. 2003) (quoting *Schempp v. Lucre Mgmt. Grp., LLC*, 18 P.3d 762, 764 (Colo. App. 2000)).

¶ 27 The allegations in wife’s complaint implicate all four badges of fraud described above. According to the complaint, husband transferred the properties between 2017 and 2019 via quitclaim deeds for no consideration even though the properties’ values “have substantially increased since the properties were purchased.” Husband purchased the first property for \$82,500 in 1991 and the second property for \$69,900 in 1995, and he gained an ownership interest “[a]t some point” in the third property, which “other parties” purchased for \$21,500 in 1995. The complaint also alleges that husband didn’t disclose the transfers to wife and transferred the properties to insiders (his children) “with actual intent to hinder,

delay, or defraud [wife] in the rightful disposition of marital property and other assets during a dissolution of marriage proceeding.”

These allegations, viewed in the light most favorable to wife, are sufficient to show that husband made fraudulent transfers under section 38-8-105(1)(a).

¶ 28 The district court also determined that wife’s complaint fails to state a plausible claim for relief under CUFTA because it doesn’t allege sufficient facts showing that wife has a plausible ownership interest in the transferred properties. We agree with both parties, however, that CUFTA doesn’t require such a showing. See § 38-8-102(2) (defining “asset” for purposes of CUFTA as any “property of a debtor,” without any limitation relevant to this case).<sup>6</sup>

¶ 29 To the extent the defendants argue that dismissal is appropriate because the statute of limitations bars wife’s CUFTA claim regarding one of the properties, we reject their argument. A cause of action under section 38-8-105(1)(a) is extinguished unless it is brought within four years after the transfer was made or, if

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<sup>6</sup> In any event, wife claims an equitable interest in the increases in the values of the properties during the marriage, which increases are marital property.

later, within one year after the transfer was or reasonably could have been discovered by the claimant. § 38-8-110(1)(a), C.R.S. 2024. In this case, it is unclear from the complaint whether wife's cause of action regarding the property at issue has been extinguished. Although the complaint alleges that husband transferred the property in 2017, it doesn't specify when wife discovered or reasonably could have discovered the transfer. Dismissal at this stage based on a statute of limitations defense is therefore inappropriate. *Cf. Meyerstein v. City of Aspen*, 282 P.3d 456, 470-71 (Colo. App. 2011) (a statute of limitations defense should not be raised on a motion to dismiss unless the complaint's bare allegations clearly reveal that the action wasn't brought within the required statutory period).

## 2. Civil Conspiracy Claim

¶ 30 Wife's complaint also alleges that the defendants engaged in a civil conspiracy to violate CUFTA. The defendants concede that a fraudulent transfer in violation of CUFTA is a legal wrong that can support a creditor's civil conspiracy claim, *see Vickery v. Evelyn V. Trumble Living Tr.*, 277 P.3d 864, 871 (Colo. App. 2011), and, consequently, if the district court erroneously dismissed wife's

underlying CUFTA claim, it also erroneously dismissed her derivative civil conspiracy claim.

¶ 31 Because the complaint alleges facts sufficient to support wife's CUFTA claim, we conclude that her civil conspiracy claim likewise survives the defendants' motion to dismiss.<sup>7</sup>

### III. Disposition

¶ 32 The judgment is reversed, and the case is remanded to the district court to reinstate wife's complaint.

JUDGE SULLIVAN and JUDGE TAUBMAN concur.

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<sup>7</sup> We don't express any opinion on the merits of wife's claims, which still must be tested through discovery and, possibly, a trial. We hold only that wife's claims survive the defendants' motion to dismiss under C.R.C.P. 12(b)(5).