

FILED

NOT FOR PUBLICATION

AUG 20 2009

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN C. PERRY; et al.,

Plaintiffs - Appellants,

v.

THOMAS A. RADO; et al.,

Defendants - Appellees.

No. 07-35684

D.C. No. CV-07-05001-LRS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, Chief District Judge, Presiding

Submitted August 6, 2009**
Seattle, Washington

Before: PREGERSON and BEA, Circuit Judges, and MAHAN,*** District Judge.

Dr. John C. Perry and Teddy Bear Obstetrics & Gynecology P.S. appeal the district court's order, pursuant to Federal Rule of Civil Procedure 12(b)(6),

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable James C. Mahan, United States District Judge for the District of Nevada, sitting by designation.

dismissing their complaint with prejudice for failure to state a claim. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The district court did not err when it dismissed the complaint. The complaint fails to plead sufficient facts to make it plausible that the defendants' termination of Perry's privileges at Kadlec Medical Center constituted an injury to competition in the market-at-large, rather than an injury to Perry personally. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007).

Moreover, the district court did not abuse its discretion when it dismissed the complaint with prejudice. In his response to the defendants' motion to dismiss, Perry listed the additional facts he could plead in an amended complaint. The district court considered these facts and concluded correctly that they did not allege an injury to competition and so any amendment to the complaint would be futile. *See Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1051 (9th Cir. 2008).

AFFIRMED.