

FEB 08 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK HALL; et al.,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA; et al.,

Defendants - Appellees.

No. 06-15522

D.C. No. CV-04-01020-PMP

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Philip M. Pro, District Judge, Presiding

Argued and Submitted December 7, 2007  
San Francisco, California

Before: KOZINSKI, Chief Judge, COWEN,\*\* and HAWKINS, Circuit Judges.

Appellants Hall et al. appeal dismissal of their Second Amended Complaint with prejudice, denial of their motion for leave to amend, and denial of their motion

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* Honorable Robert E. Cowen, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

to alter or amend the judgment. Because their complaint, even liberally construed, fails to state a cause of action under Nevada law, we affirm.

Even assuming a special relationship existed between the government and Perry, no Nevada court has ever recognized a duty to control or warn where there is no physical harm. See Mangeris v. Gordon, 580 P.2d 481, 483 (Nev. 1978) (citing Terasoff v. Regents of University of California, 17 Cal. 3d 425 (Cal. 1976), for the proposition that a duty to warn against “dangerous conduct” may exist where “the defendant bears some special relationship to the dangerous person or to the potential victim”).

The Restatement (Second) of Torts, which Mangeris and Terasoff rely upon, specifically limits duties arising from special relationships to protection against physical harm. RESTATEMENT (SECOND) OF TORTS § 314A (1965) (certain special relationships give rise to a duty to protect “against unreasonable risk of physical harm”); id. § 315 (absent a special relationship there is no duty “to control the conduct of a third person as to prevent him from causing physical harm”); id. § 319 (duty to exercise reasonable care to control third person arises where a person “takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled”) (emphases added).

Because no amendment to the complaint would allege physical harm, the district court did not err in dismissing the complaint with prejudice. The district court's dismissal is **AFFIRMED**.