IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3132
Summary Calendar

NINA S. BROYLES
and
SPECIAL DELIVERY ADOPTION SERVICES, INC.,

Plaintiffs-Appellants,

VERSUS

W. LUTHER (BILL) WILSON,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
. . . . . (CA 92 403 B M1)

August 19, 1993

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

JERRY E SMITH, Circuit Judge:[*]

Nina Broyles and Special Delivery Adoption Services, Inc. ("SDAS"), filed suit against Luther Wilson and several others, alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(c) and 1964(c) and

---

[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

(d), the Sherman and Clayton Acts, 15 U.S.C. §§ 1 and 15, and Louisiana state law. Under FED. R. CIV. P. 12(b)(6), the district court dismissed the federal claims with prejudice and the state claims without prejudice. We affirm.

I.

Broyles is a Baton Rouge attorney who handles private adoptions. She established SDAS as an adoption agency to facilitate work with birth mothers and families who wish to adopt babies. Wilson is a partner in the Baton Rouge law firm of Taylor, Porter, Brooks & Phillips ("Taylor, Porter") who founded Cradle Haven Foundation ("Cradle Haven"), a non-profit adoption agency that provides financial support for women who plan to place babies for adoption.

Broyles and Wilson apparently have been feuding for some time over practices Broyles allegedly has committed in placing children with adoptive parents. Wilson allegedly has claimed that Broyles is a baby broker who sells babies. Broyles asserts that Wilson, through an enterprise that involves either Cradle Haven or Taylor, Porter, has made false allegations of illegal activity by Broyles in order to drive her out of the adoption business. Broyles also alleges that a negative reference from Wilson caused the American Academy of Adoption Attorneys ("AAAA") to deny membership to Broyles.

Wilson admits that he disagrees with Broyles's method of handling adoptions. Apparently, the crux of his disagreement stems

from his belief that making a profit from an adoption is unethical. He also seems to feel that Broyles does not adequately represent the interests of the biological mothers.

In May 1992, Broyles and SDAS brought suit against Wilson, Dr. Richard Tannehill, Mark McDermott, and the AAAA.[1] Her[2] complaint maintained that the defendants conspired to engage in a pattern of racketeering activity in violation of 18 U.S.C. §§ 1962(c) and 1964(c) (the RICO claim), combined to destroy Broyles's and SDAS's professional reputations in violation of 15 U.S.C. §§ 1 and 15 (the antitrust claim), and fraudulently misrepresented to others that Broyles was involved in illegal activity and defamed Broyles in violation of Louisiana law (the state law claim).

In June 1992, the district court issued a RICO case standing order. Broyles responded by adding details to her RICO claim. In August, she amended her complaint to add factual allegations. Also in August, the court found Broyles's response to the RICO standing order insufficient. Broyles then filed an amended standing order and a second amended complaint.

Wilson moved to dismiss the case pursuant to rule 12(b)(6). After a hearing on September 24, 1992, the district court indicated that it would dismiss the federal claims.

In January 1993, the court dismissed the federal claims with prejudice and the state claims without prejudice. The court found

---

[1] McDermott is the president of the AAAA.

[2] We shall refer to Broyles and SDAS together as Broyles as far as the procedural nature of the case is concerned.

that Broyles's claims were based either upon conclusionary allegations or upon facts that were legally insufficient to support a RICO or antitrust claim. The antitrust allegations failed to plead facts that showed a combination that restrained trade in the adoption business in general or Broyles's business in particular. As for the RICO claim, the court determined that neither Cradle Haven nor Taylor, Porter was a RICO enterprise, that Broyles failed to show a pattern of racketeering activity, and that the alleged predicate acts were but conclusionary allegations. The court concluded that Broyles's complaint was essentially a defamation suit that implicated neither RICO nor the antitrust laws.

Tannehill, McDermott, and the AAAA reached a settlement agreement with Broyles.[3] Wilson is the sole remaining defendant in this appeal.

II.

We review de novo a district court's dismissal of a claim on a rule 12(b)(c) motion. FDIC v. Ernst & Young, 967 F.2d 166, 167 (5th Cir. 1992). We must treat all pleaded averments as true and view them in the light most favorable to the plaintiff. Rankin v. City of Wichita Falls, 762 F.2d 444, 446 (5th Cir. 1985). We uphold the dismissal only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

[3] The district court earlier had dismissed the claims against Tannehill.

III.

We first examine Broyles's pleadings to determine whether she can prove a set of facts that entitle her to relief under the antitrust laws. Paragraphs 50 through 54b of Broyles's second supplemental and amending complaint allege her antitrust claims as follows:

50.

> The defendants, W. Luther Wilson, Mark McDermott and the American Academy of Adoption Attorneys, did contrive, combine and conspire together with others to impose an unreasonable restraint of trade and to eliminate the competition of Nina Broyles, Special Delivery and others engaged in counseling birthmothers, providing legal services and placing children for adoption by making false representations concerning the plaintiffs and others.

51.

> That at all times concerned, the defendants and their co-conspirators, including, but not limited to, William G. Davis and Michael Hart, have handled adoptions in which they place children born in Louisiana with couples residing out of state or place children born outside of the state with Louisiana couples. These transactions inherently involve the transfer of funds and documents between the various states.

52.

> Thus, defendants' overt acts were conducted with the specific intent and purpose of furthering the combination or conspiracy and have affected interstate commerce and unreasonably restrained interstate trade and commerce.

53.

> In 1988, W. Luther Wilson agreed to and conspired with William G. Davis to unreasonably restrain Nina Broyles, Special Delivery and others from successfully engaging in the adoption field. To further the conspiracy, Wilson, Davis and others with the specific intent to deceive told adoptive couples and birth parents that Nina Broyles and Special Delivery was unethical, unprofessional, engaged in the illegal activity of buying and

selling babies and under criminal investigation. Defendants made these false statements for the sole purpose of restraining Nina Broyles and Special Delivery's ability to procure and place children in the adoption market.

The statements of the defendants and their co-conspirators directly caused birthmothers and adoptive couples from working with Nina Broyles and Special Delivery and caused the termination of agreements between birthmothers and the plaintiffs, as well as adoptive couples and the plaintiffs.

54.

In early 1992, the defendants, Mark McDermott and the American Academy of Adoption Attorneys, joined the conspiracy by intentionally and knowingly spreading these lies about Nina Broyles to exclude her from the American Academy of Adoption Attorneys and restrain her ability to practice law. Furthermore, the statements were made with the intention to prohibit and unreasonably restrain Special Delivery from performing adoption services in the state of Louisiana. The defendants' conduct was in violation of Section 1 of the Sherman Anti-Trust Act.

UNLAWFUL MONOPOLIZATION

54a.

That all times [sic] concerned, the defendants, W. Luther Wilson, Mark McDermott and the American Academy of Adoption Attorneys and co-conspirators, Bill Davis and Michael Hart, combined and conspired to unreasonably restrain and monopolize the adoption business in Louisiana.

54b.

The defendants and their co-conspirators consist of a network of attorneys in Louisiana, in the Northeast and the West Coast who have combined with the specific intent to control all of the adoption business in Louisiana. In particular this network of lawyers makes referrals to a select group of attorneys in Louisiana which include the defendant, Luther Wilson, and his co-conspirator, Bill Davis. Moreover, the defendants reciprocate by making exclusive referrals to defendants belonging to the American Academy of Adoption Attorneys in the Northeast consisting of Mark McDermott, Stanley Michaelson, Michael Goldstein, Brenda O'Shea and Susanne Nichols.

54c.

> In furtherance of their efforts to monopolize and control the attorneys and agencies used in Louisiana, the defendants and their co-conspirators have intentionally and fraudulently misrepresented acts about their competitors who include, but are not limited to, Nina Broyles and Special Delivery. In an effort to monopolize the adoption industry, the defendants have caused Nina Broyles to be excluded from membership in the American Academy of Adoption Attorneys. Additionally they have falsely represented to other attorneys, adoptive couples, birth parents and judges that Nina Broyles engages in unprofessional and unethical practices, is under criminal investigation and buys and sells babies.
>
> Accordingly, defendants have performed these overt acts, stated more fully hereinabove, for the purposes of monopolizing the adoption industry in violation of § 2 of the Sherman Anti-Trust Act, entitling plaintiffs to treble damages.

54d.

> As a direct result of defendants illegal conduct, including the conspiracy to unreasonably restrain and intentional attempt to monopolize the adoption industry, Nina Broyles has sustained injury to her reputation and private practice and Special Delivery has suffered damage to its reputation, as well as economic damages.

Section 1 of the Sherman Act proscribes "[e]very contract, combination . . . or conspiracy[] in restraint of trade or commerce . . . ." 15 U.S.C. § 1. In order to state a claim for a violation of section 1, a plaintiff must allege (1) the existence of a conspiracy (2) affecting interstate commerce (3) that imposes an unreasonable restraint of trade. Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 961 F.2d 1148, 1158 (5th Cir. 1992), cert. denied, 113 S. Ct. 1046 (1993). To meet the first requirement, pleadings "must contain charges of the defendants' conspiracy and factual allegations that would support such a claim." Ancar v. Sara Plasma, Inc., 964 F.2d 465, 469 (5th Cir. 1992).

In Ancar, we found that the plaintiff had pleaded many specific antitrust violations. Id. For example, the complaint gave examples of the standardized price range scale, named a pharmaceutical company allegedly involved in a vertical price-fixing conspiracy, and documented the artificially low purchase and sale prices of a product. Id. The plaintiff also named various corporations in four different states engaged in unlawful price fixing. Id.

By contrast, Broyles's complaint fails to establish an antitrust violation. Although she does allege the existence of a conspiracy among Wilson, McDermott, and the AAAA, Broyles does not present any facts that show an actual combination among the defendants that affected interstate commerce. Her pleadings do assert that Wilson told birth mothers and prospective adoptive couples that Broyles and SDAS were unethical and that the AAAA denied Broyles membership. They then make the conclusionary allegation that McDermott and the AAAA joined the conspiracy and "spread[] lies" about Broyles. No specific facts demonstrate any intention on the part of McDermott or the AAAA to join a conspiracy. The pleadings suggest simply that McDermott and the AAAA received information from Wilson and passed it along to others and that this spread of information damaged Broyles's reputation. The damaging result alone does not create a conspiracy.

To make out an antitrust claim, a plaintiff must define a specific market affected: "Market definition is essential." Gough v. Rossman Corp., 585 F.2d 381, 389 (9th Cir. 1978), cert. denied,

440 U.S. 936 (1979). The court in Gough required a plaintiff to detail the relevant market and the injury to competition within that market. Broyles's complaint utterly fails to allege the specific market Wilson's actions affected. She does contend that Wilson tried "to eliminate the competition" through his allegedly false statements, but she pleads no facts that illustrate what competition she means.

Antitrust laws "were enacted for `the protection of competition not competitors . . . .'" Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 479, 488 (1977) (quoting Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962)). Alleged anticompetitive conduct must have an adverse impact on competition in general, not simply hurt a single competitor. The harm of which Broyles complains)) primarily that Wilson made false representations about Broyles's handling of adoptions)) is harm to Broyles alone. Her complaint makes no showing of how these false representations limited competition in the adoption business or how they might have helped Wilson and Cradle Haven monopolize the field.[4] The antitrust laws were not enacted to prohibit the kind of behavior of that Broyles's complaint describes.

In short, the district court properly dismissed Broyles's antitrust claim because she failed sufficiently to allege facts

[4] Broyles does allege that Wilson and a "network of attorneys in Louisiana, in the Northeast and the West Coast" have combined "to control all of the adoption business in Louisiana." This sort of conclusionary allegation of monopolization, without any specific facts describing monopoly power and its intentional maintenance in the relevant market to support it, is insufficient to state a claim under the antitrust laws.

that demonstrated an actual combination in restraint of trade, facts that defined the affected market, and facts that showed an adverse impact on competition in general. The facts Broyles did plead tend either to show that Wilson made nasty comments about her business practices or to be unsupported hypotheses. Neither is punishable under the antitrust laws.

IV.

We now examine Broyles's complaint to establish whether she has stated a RICO claim. Broyles contends that Wilson's conduct violated 18 U.S.C. § 1962(d) and thus violated 18 U.S.C. § 1964(c).[5] To state a cause of action under section 1964(c), Broyles must allege facts that show the conduct of an enterprise through a pattern of racketeering activity. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985).

Broyles's complaint describes the enterprise as follows:

> 25. The defendant, W. Luther Wilson, associated

[5] Title 18 U.S.C. § 1962 states in part,

> (c) It shall be unlawful for any person employed by or associated with an enterprise engaged in, or the activities which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

Title 18 U.S.C. § 1964(c) states,

> (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

with the enterprise of Cradle Haven Foundation, Inc. as defined in 18 U.S.C. § 1961(4). Cradle Haven Foundation is a non-profit adoption agency whose common purpose and goal is to assist the counseling of birthmothers, provide legal services, place children with adoptive couples and finalize adoptions. The activities of Cradle Haven affect interstate commerce because facilitating adoptions involve [sic] the procurement and placement of children among several states. Furthermore, these adoption transactions involve the mailing of documents and funds across state lines. W. Luther Wilson conducted and participated directly and indirectly in the affairs of the enterprise through a pattern of racketeering activity as defined in 18 U.S.C. § 1961(5). The defendant conducted the affairs of the enterprise through a pattern of racketeering involving mail fraud, wire fraud and violations of Louisiana criminal statutes.

26. In the alternative, the defendant is a member of the enterprise of the Taylor, Porter, Brooks and Phillips, the activities of which affect interstate commerce. The common purpose and goals of the members of the enterprise is to represent certain insurance firms, businesses, corporations, birthmothers, and adopting couples in their legal affairs. The defendant conducted the affairs of the enterprise through a pattern of racketeering involving the predicate acts of mail fraud, wire fraud and violations of the Louisiana criminal statutes. Since late 1987 and early 1988, the defendant and the enterprise have benefitted by receiving large sums of money in the procurement and placement of children as a direct result of defendant's scheme to defraud the plaintiffs by injuring them in their business, property and reputation.

The complaint describes, in part, an alleged scheme to defraud as follows:

32. In the mid to late 1980's, the Defendant, Bill Wilson, made the decision that he and a few other divine individuals were the only ones qualified, educated and possessed with the moral turpitude to make decisions to properly procure children and place them with adoptive parents of their choosing. The Defendant, in doing so, established a foundation called the Cradle Haven Foundation, Inc., as well as worked closely with a select few other foundations that he deemed appropriate. In so doing, from 1986 to present, the Defendant, Bill Wilson, through the use of his law firm, Taylor, Porter, Brooks & Phillips, has referenced working with almost 200 adopting parents, most of who which [sic] are of high

financial influence and profession throughout the United States. Many of which were initially working with the Plaintiff, Nina Broyles and/or the agency, Special Delivery Services, Inc.

33. Plaintiffs have suffered damages and losses while Defendants have obtained money and/or property by use of fraud, misrepresentation, deceit, false pretenses, trickery and other acts which constitute a violation of the Louisiana Unfair Trade Practices Act La.R.S. 51:1409 et seq, as well as a violation of wire fraud and mail fraud as defined in 18 U.S.C. § 1961(1)(a) and also in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343.

34. In 1988 and 1989, subsequent to the establishment of Special Delivery Services, Inc., Bill Wilson told Dr. Richard Tannehill and many others that Special Delivery and Nina Broyles were involved in criminal activity and were highly unethical and unprofessional. At such time, Dr. Tannehill instituted a policy that he would do whatever he could to avoid caring for or delivering children which were either being procured by Special Delivery or being placed in adoptive homes by Special Delivery. Particularly, Dr. Tannehill made efforts to place the children in a home of his choice and/or Bill Wilson's choice. Dr. Tannehill's actions effectively constituted an agreement between he [sic] and Bill Wilson reflecting a continuing scheme to defraud Plaintiffs, by telling others in the community that Nina Broyles was unethical, unprofessional, a liar and that she and Special Delivery were in the business of buying and selling babies. All of which inflicted continuing injuries upon Nina Broyles and all of which conduct constitutes continuing violations and continuing torts.

35. The conduct described by the Plaintiffs in the above paragraphs was carried out by the Defendants contacting birthmothers who are under contract with Special Delivery and/or Nina Broyles, as well adoptive parents who are under contract with Special Delivery and/or Nina Broyles and in telling them that Nina Broyles is unethical, unprofessional and that Special Delivery buys and sell babies and that they should not do business with either Plaintiff, Nina Broyles or Special Delivery. Moreover, the scheme to defraud has been further carried out by the Defendants [sic] contacting the State Department of Health and Human Resources and encouraging them to repeatedly harass, investigate and/or audit Special Delivery, as well as by contacting the District Attorney's office and encouraging them to bring criminal prosecution. Finally, said scheme to defraud has been further carried out by giving such information to

> Defendant, The American Academy of Adoption Attorneys for purposes of spreading these falsehoods and "black balling" Nina Broyles and/or Special Delivery as an acceptable adoption attorney and/or adoption agency.

The complaint then alleges that Wilson and others sent through the federal mail system several letters, depositions, tax returns (Wilson's and Cradle Haven's, among others), and literature in furtherance of their scheme to defraud Broyles. It goes on to assert that Wilson and others transmitted by wire, mainly in the form of telephone conversations between Wilson and Broyles and Wilson and the AAAA, communications intended fraudulently to obtain money.

In her amended RICO standing order, Broyles lists several predicate acts that allegedly violated federal law. Predicate acts one through ten allege violations of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud); precicate acts 11 through 15 allege violations of state law. A flavor of the predicate acts is found in the following examples:

> 1. In the fall of 1987, Nina Broyles and Special Delivery were handling the placement of the child of birthmother Betty J. In October of 1987, W. Luther Wilson with full knowledge that this birthmother had been receiving expenses from Plaintiffs schemed with Betty J. and advanced her monies for lodging, food and medical costs. This child was ultimately place [sic] with a couple in Lexington, Massachusetts. Numerous pleadings were sent the U.S. mail to Lexington in furtherance of the defendant's scheme.
>
> 10. In the fall of 1991, there was an interstate telephone conversation between Janet Stulting, the membership chairman of the American Academy of Adoption Attorneys in Washington, DC and W. Luther Wilson located in Baton Rouge, Louisiana. During this interstate communication, Wilson advised Janet Stulting that Nina Broyles and Special Delivery engaged in unethical practices. The defendant caused this interstate communi-

> cation to take place when he made false allegations to a member of the American Academy of Adoption Attorneys concerning Nina Broyles and Special Delivery.
>
> 14. In October of 1987, W. Luther Wilson violated Louisiana Revised Statute 14:66 when he threatened birthmothers Angela L. and Theresa E. that if they placed their babies through Special Delivery or Nina Broyles the State of Louisiana would take their babies away, place them in Foster Care and that the mothers would be placed under arrest. As a result of Wilson's intentional and criminal actions both birthmothers placed their babies out of state causing Plaintiffs to lose the agency fees and the adoptive couples to lose those monies advanced for these expectant mothers medical and living expenses.

"In order to state a civil RICO claim, plaintiffs must allege both the existence of an `enterprise' and the connected `pattern of racketeering activity.'" Montesano v. Seafirst Commercial Corp., 818 F.2d 423, 427 (5th Cir. 1987) (citing United States v. Turkette, 452 U.S. 576, 582 (1981)). We first examine Broyles's complaint to determine whether it provides facts sufficient to establish the existence of an enterprise. Broyles "must plead specific facts, not mere conclusory allegations, which establish the enterprise." Montesano, 818 F.2d at 427.

Broyles alleges that the enterprise is either Cradle Haven or Taylor, Porter. She claims that Cradle Haven's purpose is to assist mothers in placing their children with adoptive parents, and Wilson conducted Cradle Haven's affairs through a pattern of racketeering activity, including mail and wire fraud. Alternatively, Broyles claims that Taylor, Porter is a law firm whose purpose is to represent clients, including birth mothers and adopting couples, in their legal affairs. She alleges that Wilson conducted Taylor, Porter's affairs in a manner calculated to

defraud Broyles.

A RICO enterprise must be "an entity separate and apart from the pattern of activity in which it engages." Atkinson v. Anadarko Bank & Trust Co., 808 F.2d 438, 441 (5th Cir.), cert. denied, 483 U.S. 1032 (1987). The acts of alleged members of the enterprise must take place within the course of their conduct as employees of the enterprise. Parker & Parsley Petroleum Co. v. Dresser Indus., 972 F.2d 580, 583 (5th Cir. 1992). The plaintiff must allege more than that the enterprise, through its agents, committed the predicate acts in conducting its own business. Elliott v. Foufas, 867 F.2d 877, 881 (5th Cir. 1989).

We agree with the district court that neither Cradle Haven nor Taylor, Porter is a RICO enterprise. Cradle Haven helps mothers place their children with adoptive parents; Porter, Taylor represents clients in their legal affairs. Broyles's complaint does not allege, as it must to survive a rule 12(b)(6) motion, that either entity exists, separately from its normal pattern of activity, simply to enable Wilson to defraud Broyles. In addition, the complaint does not show more than that the acts committed were done in the regular course of Cradle Haven's and Taylor, Porter's business.

Even assuming arguendo, however, that the complaint does allege a RICO enterprise, it does not meet the "pattern of racketeering activity" requirement. "Racketeering activity" means any act indictable under various federal statutes and certain other federal offenses. 18 U.S.C. § 1961(2); Howell Hydrocarbons v.

Adams, 897 F.2d 183, 190 (5th Cir. 1990).[6] A "pattern" requires at least two acts of racketeering activity within a period of ten years. 18 U.S.C. § 1961(5).

In H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239 (1989), the Court held that "to prove a pattern of racketeering activity a plaintiff . . . must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity. We found in Calcasieu Marine Nat'l Bank v. Grant, 943 F.2d 1453, 1463 (5th Cir. 1991), that H.J. Inc. "narrowed" the pattern definition. In Landry v. Air Line Pilots Ass'n Int'l, 901 F.2d 404, 433 (5th Cir.), cert. denied, 498 U.S. 895 (1970), we declared that in order to be related, all predicate acts had to be aimed at achieving a single goal.

Broyles's pleadings do not satisfy the narrow definition of "pattern." First, there is no factual showing of any relation among the predicate acts. The predicate acts that Broyles describes consist of various occasions when Wilson told birth mothers or people in the adoption business that Broyles engaged in unethical behavior. They do not, however, demonstrate any relationship between one act and another. Nor do they give any indication that they all are aimed at the same objective. They are more similar to isolated instances of a feud between two lawyers with differing views on how to arrange adoptions than to connected, continuous criminal acts punishable under RICO.

---

[6] Section 1961(1) defines "racketeering activity" as any act such as murder, bribery, and extortion, or any act indictable under federal statutes, including § 1341 (mail fraud), § 1343 (wire fraud), and § 1951 (extortion).

Perhaps more importantly, Broyles's pleadings do not adequately allege predicate acts punishable under RICO. The RICO standing order requires Broyles to state the circumstances with particularity, in accord with FED. R. CIV. P. 9(b). Broyles has failed to do so. While predicate acts 1 through 10 allege mail and wire fraud, they do not sufficiently detail facts to support these allegations.

For example, predicate act 1 asserts that Wilson sent "pleadings" through the mail to further a "scheme" to have a birth mother who had been working with Broyles instead work with Wilson. The predicate act as described does not allege a claim under 18 U.S.C. § 1341,[7] which requires a showing that a defendant participated in a scheme to defraud and used the mails to execute the scheme. See Landry, 901 F.2d at 428. Predicate act 1 does not sufficiently allege either an actual scheme to defraud or the link between the scheme and the mails.

---

[7] Section 1341 states,

> Whoever, having devised or intended to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Predicate act 10 suffers from the same fatal flaws. The pleading alleges that during an interstate telephone call, Wilson told the membership chairman of the AAAA that Broyles engaged in unethical practices. In order to state a claim for wire fraud, Broyles must show that Wilson participated in a scheme to defraud and used wire communications to execute the scheme. 18 U.S.C. § 1343.[8] The predicate act does not show Wilson's participation in a scheme to defraud. There is no allegation of trickery or deception. Rather, the alleged misrepresentation is merely a statement of opinion, not evidence of a pattern of racketeering.

An examination of predicate act 14 completes our survey. This pleading alleges that Wilson violated LA. R.S. 14:66 by "threaten[ing]" two birth mothers that the state would arrest them and place their babies in foster care if they used Broyles to place their babies. The mothers eventually placed their babies in a different state, causing Broyles to lose money. The statute at issue punishes a person who communicates "threats to another with the intention thereby to obtain anything of value . . . ." LA. R.S. 14:66. Broyles's pleading once more fails because it does not

[8] Section 1343 states,

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

show how Wilson planned to obtain anything of value.

Our review of Broyles's pleadings convinces us that the district court was correct in concluding that "[t]he alleged predicate acts are either not predicate acts, were not committed in furtherance of a scheme, or were mere conclusory allegations, all of which fail to meet the legal standards required to support a RICO claim on a rule 12(b)(6) motion."

V.

In conclusion, we AFFIRM the district court's order granting the motion to dismiss the complaint for failing to state a claim under the antitrust laws or under RICO.