

UNITED STATES DISTRICT COURT  
 DISTRICT OF SOUTH DAKOTA  
 SOUTHERN DIVISION

**FILED**

OCT 05 2015


 CLERK

PAUL A. ROSBERG, ELIAS P.  
 ROSBERG, LEAH K. ROSBERG,  
 SAMUAL P. ROSBERG, LILY A.  
 ROSBERG, ANDREW P. ROSBERG,  
 and MARY K. ROSBERG,

Plaintiffs,

vs.

JOSEPH SANDS, CHRISTOPHER A.  
 MIHALO, KELLY R. ROSBERG, BRIAN  
 E. JORDE, and RONALD JONES,

Defendants.

4:15-CV-04080-LLP

ORDER DISMISSING  
 COMPLAINT

### INTRODUCTION

Plaintiff, Paul A. Rosberg, filed this pro se lawsuit naming Joseph Sands, Christopher A. Mihalo, Kelly R. Rosberg, Brian E. Jorde, and Ronald Jones as defendants. He named himself and his children as plaintiffs. At the time of filing, Rosberg was incarcerated at the federal prison camp in Yankton, South Dakota. The Court “screened” this case pursuant to 28 U.S.C. § 1915A. For the following reasons, Rosberg’s claim is dismissed.

### FACTUAL BACKGROUND

Rosberg married Kelly in 1996 and farmed and operated a meat processing plant until they were arrested for illegally packaging federally inspected meat. Docket 1 at 2. Rosberg agreed to a plea deal in which he received an eighteen month prison sentence, and Kelly received probation. *Id.*

at 3. He started serving time on February 27, 2014. *Id.* at 4. On August 19, 2014, Kelly filed for divorce, which Rosberg blames on defendant Sands. *Id.* Rosberg claims Sands dated his wife, convinced her to file for divorce, and had her take money from Rosberg. *Id.* at 3-4.

Rosberg also claims that Kelly cashed a cashier's check made out to him and his corporation, transferred money out of his corporate bank account, and cashed a check made out to both of them without giving him any money. *Id.* at 6-7. Overall, Rosberg claims Kelly took \$92,268 from him. *Id.* at 7. He also alleges Sand conspired to take this money. *Id.*

Rosberg claims that his children lost their stable home environment and are suffering emotionally because of Sands. *Id.* Finally, he claims that Kelly took \$3,000 of his money and gave it to defendants Mihalo, Jorde, and Jones. *Id.*

Rosberg requests \$400,000 in damages from Sands under Count I. *Id.* at 8. Under Count II, he requests \$92,268 from Sands and Kelly. *Id.* Under Count III, he requests \$600,000 in damages from Sands for his children. *Id.* Under Count IV and V, he requests the \$1,000 and \$2,000 that was taken by Kelly and given to other defendants. *Id.*

## **DISCUSSION**

Rosberg alleges this court has diversity jurisdiction under 28 U.S.C. § 1332. "Diversity jurisdiction 'requires an amount in controversy greater than \$75,000 and complete diversity of citizenship of the litigants.'" *E3 Biofuels, LLC v. Biothane, LLC*, 781 F.3d 972, 975 (8th Cir. 2015) (quoting *OnePoint*

*Solutions, LLC v. Borchert*, 486 F.3d 342, 346 (8th Cir. 2007)). “ ‘Complete diversity of citizenship exists where no defendant holds citizenship in the same state where any plaintiff holds citizenship.’ ” *Id.* (quoting *OnePoint Solutions*, 486 F.3d at 346).

“[F]or purposes of determining diversity of citizenship, the controlling consideration is the domicile of the individual.” *Jones v. Hadican*, 552 F.2d 249, 250 (8th Cir. 1977). “[A] prisoner does not acquire a new domicile when he is incarcerated in a different state; instead, he retains the domicile he had prior to his incarceration.” *Id.* (citations omitted). The court held this “traditional rule” was a presumption that “could be rebutted by a prisoner who could show facts sufficient to indicate a bona fide intention to change his domicile to the place of his incarceration.” *Id.* at 251.

When he filed this complaint, Rosberg was a prisoner in South Dakota. Before being incarcerated, he lived in Nebraska, where all defendants lived. Rosberg has not argued that he is domiciled outside of Nebraska. Therefore, his citizenship is not diverse to all defendants.

Accordingly, it is ORDERED that Rosberg’s complaint (Docket 1) is dismissed without prejudice for lack of jurisdiction.

Dated October 5<sup>th</sup>, 2015.

BY THE COURT:



Lawrence L. Piersol  
UNITED STATES DISTRICT JUDGE