

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|----------------------------------|---|----------------------------|
| GERALD L. RICKS, | } | |
| TDCJ-CID NO.1049115, | } | |
| Plaintiff, | } | |
| v. | } | CIVIL ACTION NO. H-08-1670 |
| | } | |
| ELETHA L. RICKS, <i>et al.</i> , | } | |
| Defendants. | } | |

OPINION ON DISMISSAL

Plaintiff Gerald L. Ricks, an inmate incarcerated in the Texas Department of Criminal Justice-Correctional Institutions Division (“TDCJ-CID”) proceeding *pro se*, has filed a criminal complaint against his ex-wife and her attorney on grounds that they have committed fraud against him and the State of Texas. (Docket Entry No.1). For the reasons to follow, the Court will dismiss the complaint with prejudice.

Plaintiff alleges that at some point before or during his incarceration in TDCJ, he executed a durable power of attorney authorizing his wife Eletha to borrow, discharge, sell real property and open mutual funds account. (Docket Entry No.1, Exhibit at pages 9-13). To resolve a federal tax debt, plaintiff agreed per a “Tax Debt Reduction and Homesale Agreement,” that Eletha would use the money from a home equity loan to extinguish the debt. Thereafter, Eletha would sell their home, pay off the home equity loan, and deposit the funds remaining in a mutual fund in both plaintiff’s and Eletha’s names or alternatively, in plaintiff’s prison trust fund account. (Docket Entry No.1, Exhibit at page 43). Apparently, Eletha did not acquire a home equity loan and did not pay plaintiff’s tax debt. (*Id.*, Exhibit at pages 45-46). Instead, Eletha filed a petition for divorce in the 306th District Court of Galveston County in cause number 07FD 1547. (*Id.* Exhibit at pages 19-25).

Plaintiff attempted to litigate the divorce and property settlement from prison. (*Id.*, Exhibit at pages 4-8). On May 28, 2008, plaintiff and his ex-spouse Eletha transferred assets according to a divorce settlement agreement. (Docket Entry No.3). On June 6, 2008, plaintiff received the final divorce decree, which purported to comply with the May 28th property settlement. (*Id.*). On June 10, 2008, plaintiff received more documents, which he claims show that Eletha and her attorney have not complied with the property settlement. (*Id.*). Plaintiff requests the Court to order the arrest of Eletha and her attorney on grounds that they have committed fraud. (Docket Entries No.1, No.3).

To the extent that plaintiff's claims of fraud present any kind of federal question, the Court declines to exercise jurisdiction over the case. *See Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) (holding that comity between sovereigns requires federal court to dismiss some cases properly brought in federal court to state court for resolution). Abstention is appropriate here because a federal court should decline to hear disputes that involve matters intruding on state domestic relations law. *See DuBroff v. DuBroff*, 833 F.2d 557, 562 (5th Cir. 1987). Moreover, all of plaintiff's claims can probably be brought in the state court action. *Id.*

Accordingly, plaintiff's complaint is DISMISSED with prejudice. All pending motions, if any, are DENIED.

The Clerk will provide a copy of this order to the parties.

SIGNED at Houston, Texas, this 17th day of July, 2008.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE