

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

TARA L. NELSON,

Petitioner,

v.

Case No. 06-2497-JWL

JENNIFER MCDONALD,

Respondent.

MEMORANDUM & ORDER

This matter is currently before the court on defendant Jennifer McDonald's motion to dismiss (doc. 6) and motion for summary judgment (doc. 7). In her response to these motions (doc. 10), plaintiff Tara L. Nelson concedes that she and Ms. McDonald are both residents of the state of Missouri. Accordingly, this court lacks diversity jurisdiction under 28 U.S.C. § 1332. Ms. McDonald urges the court to dismiss Ms. Nelson's complaint with prejudice, arguing that the action is time-barred and that dismissing without prejudice would "only delay the inevitable." Because it lacks subject matter jurisdiction over this matter, however, the court may not reach the merits of Ms. McDonald's argument. *Cunningham v. BHP Petroleum Great Britain PLC*, 427 F.3d 1238, 1245 (10th Cir. 2005) ("A court may not . . . exercise authority over a case for which it does not have subject matter jurisdiction . . . once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue.") (quotations

omitted). Thus, the court dismisses this action without prejudice. *See Martinez v. Martinez*, 62 Fed. Appx. 309, 314-15 (10th Cir. 2003)(dismissal for lack of diversity jurisdiction should be without prejudice); *Hollander v. Sandoz Pharm. Corp.*, 289 F.3d 1193, 1216-17 (10th Cir. 2002)(jurisdictional ruling that did not reach merits of plaintiff's claim should have been dismissed without prejudice).

IT IS THEREFORE ORDERED BY THE COURT THAT defendant's motion to dismiss (doc. 6) and motion for summary judgment (doc. 7) are denied. Plaintiff's complaint (doc. 1) is dismissed without prejudice.

IT IS SO ORDERED.

Dated this 21st day of May, 2007

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge