

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ANDREA MOOK,

Plaintiff,

v.

DOUGLAS GERTSEMA, et al.,

Defendants.

CIVIL ACTION

Case No. 07-2152-CM

MEMORANDUM AND ORDER

Plaintiff brings this action alleging that her supervisor sexually harassed, battered, and assaulted her and created a hostile working environment. The case is before the court on defendant Johnson County Department of Corrections’s Motion to Dismiss (Doc. 15). Defendant argues that it is not an entity capable of being sued.

Whether an entity has the capacity “to sue or be sued shall be determined by the law of the state in which the district court is held.” Fed. R. Civ. P. 17(b). In Kansas, government agencies lack the capacity to sue or be sued unless the legislature created such capacity statutorily. *See Corder v. Bd. of Healing Arts*, 889 P.2d 1127, 1144–45 (Kan. 1994); *Hopkins v. State*, 702 P.2d 311, 316 (Kan. 1985). Here, plaintiff has not presented—and the court has not found—statutory authority allowing the Johnson County Department of Corrections to sue or be sued. To the contrary, courts in this district have held that neither the Kansas Department of Corrections nor the Shawnee County Department of Corrections is an entity capable of being sued. *See, e.g., Grayson v. Kansas*, No. 06-2375-KHV, 2007 WL 1259990, at *3 (D. Kan. Apr. 30, 2007); *Barngrover v. County of Shawnee*, No. 02-4021-JAR, 2002 WL 1758914, at *2 (D. Kan. June 10, 2002).

The court has reviewed the numerous arguments and out-of-state cases that plaintiff presents in support of her position that a factual issue exists as to whether the Johnson County Department of Corrections can be sued. The court will not address them in detail here, but finds them unpersuasive. Plaintiff's position is contrary to the well-settled law in this state and district.

IT IS THEREFORE ORDERED that defendant Johnson County Department of Corrections's Motion to Dismiss (Doc. 15) is granted.

Dated this 26th day of March 2008, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge