

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

RYAN CHEATHAM,)
)
 Plaintiff,)
)
 v.)
)
 ACH, et al.,)
)
 Defendants.)
)

Case No. 15-3211-CM

MEMORANDUM AND ORDER

Plaintiff Ryan Cheatham, a prisoner proceeding pro se, brought this action against defendants ACH Medical Service, Melissa (Inu), and Leavenworth County Sheriff’s Department. Plaintiff claims that defendants ignored his mental health needs, violating the Eighth Amendment and plaintiff’s due process rights. Defendant Leavenworth County Sheriff’s Office filed a motion for judgment on the pleadings (Doc. 34). In its motion, defendant argues that the court should dismiss the case against it because the sheriff’s department is not an entity capable of being sued.

Under Fed. R. Civ. P. 17(b), state law determines whether an entity is capable of being sued in federal court. Kansas law provides that subdivisions, agencies, or departments of governmental entities do not have the capacity to sue or be sued in the absence of a statute providing otherwise. *Hopkins v. State*, 702 P.2d 311, 316 (Kan. 1985) (holding Kansas Highway Patrol is not an entity capable of being sued); *Fugate v. Unified Gov’t of Wyandotte Cnty.*, 161 F. Supp. 2d 1261, 1266 (D. Kan. 2001) (“Absent a specific statute, subordinate governmental agencies do not have the capacity to sue or be sued.”). No Kansas statute creates the Leavenworth County Sheriff’s Office or gives it the capacity to sue or be sued. See *Wright v. Wyandotte Cnty. Sheriff’s Dep’t*, 963 F. Supp. 1029, 1034 (D.

Kan. 1997) (“The sheriff's department is merely an agency of the county . . . and is not itself capable of being sued.”). The court therefore dismisses the sheriff’s office.

IT IS THEREFORE ORDERED that defendant Leavenworth County Sheriff’s Office’s motion for judgment on the pleadings (Doc. 34) is granted. The sheriff’s office should be terminated as a party in this case.

Dated this 23th day of January, 2017, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge