

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals****For the Seventh Circuit****Chicago, Illinois 60604**

Submitted November 2, 2023\*

Decided November 3, 2023

**Before**FRANK H. EASTERBROOK, *Circuit Judge*ILANA DIAMOND ROVNER, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 22-3010

AUTUMN RODGERS,  
*Plaintiff-Appellant,**v.*GENESIS BEHAVIORAL SERVICES –  
CROSSROADS, et al.,  
*Defendants-Appellees.*Appeal from the United States District  
Court for the Eastern District of  
Wisconsin.

No. 22-CV-993

Stephen C. Dries,  
*Magistrate Judge.*

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\* The appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

## ORDER

Autumn Rodgers sued the Wisconsin Department of Corrections, Genesis Behavioral Services – Crossroads<sup>1</sup> (a residential services facility contracted with the Department), and an employee of the facility. She alleged that while she was receiving court-ordered inpatient treatment at Crossroads, the employee stole thousands of dollars from her bank account. At screening, the district court dismissed her complaint for failure to state a claim, and we affirm.

As an alternative to being jailed for an unspecified crime, Rodgers spent 90 days at Crossroads for mental health and substance abuse treatment. While Rodgers was there, a staff member, Cindy, took Rodgers to an ATM to withdraw cash to rent an apartment that Cindy promised would be for Rodgers when she was released. Cindy later used Rodgers's debit card information, without permission, to transfer money to an account belonging to Cindy's incarcerated son. There was no apartment waiting for Rodgers when she completed her 90-day program, and she became homeless.

Rodgers sued Cindy, Crossroads, and the Department under 42 U.S.C. § 1983, asserting that Cindy had stolen upwards of \$2000 from her bank account. A magistrate judge, presiding with the parties' consent, *see* 28 U.S.C. § 636(c), reviewed Rodgers's complaint and dismissed it for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). Understanding Rodgers to allege violations of her Fourteenth Amendment protection against deprivation of property without due process of law, the district court determined that Rodgers did not state a claim against Cindy because the thefts were random and unauthorized acts for which Rodgers had adequate post-deprivation remedies under state law. The court further determined that Rodgers failed to state a claim against the Department and Crossroads because neither is a "person" nor a separate legal entity that can be sued under § 1983. Rodgers appeals the dismissal, a decision we review *de novo*. *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1027 (7th Cir. 2013).

We generously construe Rodgers's *pro se* brief, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), in which she argues generally that she brought a valid claim and proposes amendments to her complaint. These arguments are not well-developed, but we prefer

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<sup>1</sup> Based on public records of the Wisconsin Department of Corrections, we substitute the correct name of the residential services program that the plaintiff-appellant identified as "Cross Roads Dual Diagnosis Facility."

to decide cases on the merits when we can. *Boutros v. Avis Rent A Car Sys., LLC*, 802 F.3d 918, 924 (7th Cir. 2015).

Rodgers does not persuade us that the district court was wrong to dismiss her complaint. First, even if we assume that Cindy was a state actor for purposes of § 1983, Rodgers does not dispute the district court's characterization of Cindy's actions as random and unauthorized, which is how the law generally views incidents of theft by state actors. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984); *Gable v. City of Chicago*, 296 F.3d 531, 540 (7th Cir. 2002). Under *Hudson*, an intentional, unauthorized deprivation of property does not violate the procedural requirements of the Due Process Clause if a meaningful post-deprivation remedy for the plaintiff's loss is available. 468 U.S. at 533. We have previously held that Wisconsin's post-deprivation procedures—the inmate-complaint system, certiorari review under state law, and tort remedies—are adequate, and Rodgers does not argue otherwise. *See Hamlin v. Vaudenberg*, 95 F.3d 580, 585 (7th Cir. 1996); *see also* WIS. STAT. §§ 893.35; 893.51; 893.52.

Dismissing the claims against the Department and Crossroads was also appropriate. The Department, a division of the state, is not a “person” under § 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *de Lima Silva v. Dep't of Corr.*, 917 F.3d 546, 565 n.15 (7th Cir. 2019). But Crossroads, which appears to be private, might be subject to suit under § 1983 based on the complaint's assertion that it provides services for people in the Department's custody: Companies that contract to provide essential government services are subject to at least the same rules that apply to public entities and thus may be liable for constitutional violations under § 1983. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982); *Glisson v. Indiana Dep't of Corr.*, 849 F.3d 372, 378–79 (7th Cir. 2017) (en banc).

Even so, Crossroads cannot be liable under § 1983 solely for employing the wrongdoer; Crossroads is a proper defendant only if its policies or customs caused Rodgers's injury. *See Monell v. Dep't of Social Servs.*, 436 U.S. 658, 694 (1978); *Iskander v. Vill. of Forest Park*, 690 F.2d 126, 128 (7th Cir. 1982) (holding that *Monell* applies to private companies functioning as state actors); *see also Wilson v. Wexford Health Sources, Inc.*, 932 F.3d 513, 521–22 (7th Cir. 2019). To the extent the complaint says anything about Crossroads' policies, Rodgers asserted that Cindy's actions ran afoul of them. She therefore failed to state a claim against the facility.

Normally, district courts should give litigants the opportunity to amend a complaint at least once after dismissal, unless amendment would be futile. *Runnion ex*

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*rel. Runnion v. Girl Scouts*, 786 F.3d 510, 519–20 (7th Cir. 2015). Here, the court entered judgment simultaneously with dismissing Rodgers’s complaint, without explaining why she should not have the chance to amend. *Id.*; see also *Zimmerman v. Bornick*, 25 F.4th 491, 494 (7th Cir. 2022) (collecting cases). Under our de novo review, however, we conclude that amendment would be futile. In her appellate brief, Rodgers appears to propose amending her complaint to seek relief under the First and Eighth Amendments, the Americans with Disabilities Act, and various Wisconsin statutes. But her potential legal theories are beside the point; a complaint must narrate a person’s grievance with sufficient factual content to make it plausible that she is entitled to relief. *Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014); *Koger v. Dart*, 950 F.3d 971, 974 (7th Cir. 2020). Nothing Rodgers suggests adding would fix the problems with her claims.

AFFIRMED