

NONPRECEDENTIAL DISPOSITION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 June 12, 2025*

Decided June 13, 2025

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 25-1068

ANTHONY L. SMITH,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Southern District of
Indiana, Evansville Division.

v.

No. 3:24-cv-00235-RLY-CSW

UNITED CARING SERVICES, et al.,
Defendants-Appellees.

Richard L. Young,
Judge.

No. 25-1211

ANTHONY L. SMITH,
Plaintiff-Appellant,

Appeal from the United States District
Court for the Southern District of
Indiana, Evansville Division.

* The appellees were not served with process and are not participating in these appeals. 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).

v.

No. 3:24-cv-00233-MPB-CSW

TRACY GORMAN, et al.,
Defendants-Appellees.

Matthew P. Brookman,
Judge.

ORDER

Anthony Smith appeals the dismissal of his two complaints against the staff of homeless shelters in Evansville, Indiana. Because the district judges correctly determined that the defendants were not state actors subject to suit under 42 U.S.C. § 1983, we affirm both judgments.

We accept as true the well-pleaded facts alleged in Smith's pro se complaints, which we construe liberally. *Balle v. Kennedy*, 73 F.4th 545, 557 (7th Cir. 2023). Smith is a Black man who, in November and December 2024, was experiencing homelessness. While a resident at the Evansville Rescue Mission, a homeless shelter, Smith alleges that staff singled him out for rule violations but let similar behavior by white residents go unpunished. He also says that staff were rude to him, and when he reported all of this to management, staff retaliated against him by taking his belongings and summarily kicking him out of the shelter into the winter cold.

Smith then stayed at United Caring Services, another shelter. According to Smith, the shelter did not allow residents to leave in the evening and restricted access to bathrooms overnight. Smith says that he needed to urgently use the restroom early one morning, but no staff were available to grant him access. So he was forced to urinate on himself. When he complained to staff about the incident, they dismissed his concerns.

Smith then filed two suits in federal court under 42 U.S.C. § 1983. In one complaint, he asserted that the staff of Evansville Rescue Mission violated his equal protection rights by singling him out for punishment because of his race as well as violated his free speech rights by retaliating against him when he complained about his unfair treatment. He also argued that the staff unlawfully seized his property in violation of the Fourth Amendment and expelled him from the shelter without due process. In another complaint, he argued that United Caring Services and two of its staff effectively operated a prison by confining residents overnight and were deliberately indifferent to residents' basic needs by restricting access to bathrooms.

The district judges dismissed the complaints in both suits because the defendants were not state actors subject to suit under § 1983. The judges explained that the shelters did not perform a public function reserved for the government and were not acting as an arm of the state by involving the police in disputes with residents or receiving funding from the government subject to oversight. Smith appealed the dismissal of both suits and filed a single brief, so we consolidated the appeals.

First, a note on jurisdiction. Smith's suit against the staff of Evansville Rescue Mission was dismissed without prejudice and with leave to amend, so Smith believes he must invoke the collateral-order doctrine, *see Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949), to seek review because there is no final judgment from the district court. But the district judge said he was giving Smith "one last opportunity" to file an amended complaint within thirty days. Smith affirmatively declined to further litigate the case in the district court, so the judge's order became an appealable final decision when the thirty days elapsed, and our jurisdiction is secure regardless of the "without prejudice" label. *See Shott v. Katz*, 829 F.3d 494, 496 (7th Cir. 2016); *Schering-Plough Healthcare Prods., Inc. v. Schwarz Pharma, Inc.*, 586 F.3d 500, 507 (7th Cir. 2009).

On the merits, Smith argues that he stated a claim against the shelters under § 1983. A plaintiff may bring a suit under § 1983 only against a "person" acting "under color of" state law, a requirement that generally excludes private actors. *See Alarm Detection Sys., Inc. v. Village of Schaumburg*, 930 F.3d 812, 825 (7th Cir. 2019). Private entities may be considered state actors only in limited circumstances—such as if the state and the private actors are closely entwined, *see Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 302 (2001), or if the private actor performs functions traditionally and exclusively reserved for the state, *see Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019).

Smith insists that both shelters should be treated as state actors, highlighting that Evansville Rescue Mission operates a separate juvenile detention center and United Caring Services operates a drug treatment center that often works with parolees. Because these operations are funded by the government and require working closely with the criminal justice system, Smith argues the shelters have become entwined with the state.

But the juvenile detention and drug treatment centers are irrelevant to Smith's claims. Whether defendants act under color of state law depends on the specific actions they performed. *See DiDonato v. Panatera*, 24 F.4th 1156, 1160 (7th Cir. 2022); *Camm v. Faith*, 937 F.3d 1096, 1105 (7th Cir. 2019). Here, Smith entered the shelters because he

was experiencing homelessness, not because he was a juvenile detainee or receiving state-mandated drug treatment.

As relevant to his presence at the shelters, Smith suggests at most that the shelters receive state funding and often work together with state officials, but that is not enough to demonstrate entwinement with the state. Instead, he would need to show the state and the shelters are “interdependent ‘to the point of largely overlapping identity.’” *Scott v. Univ. of Chi. Med. Ctr.*, 107 F.4th 752, 761 (7th Cir. 2024) (quoting *Brentwood*, 531 U.S. at 303). All he has alleged is that the defendants operated homeless shelters. Although operating these shelters is a critical public service, it is not a function performed *exclusively* by the state. *See Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982). Rather, it resembles a nursing home or special education facility—caretaking functions that the Supreme Court has held are not exclusive to the government. *See Manhattan Cmty. Access Corp.*, 587 U.S. at 810 (collecting cases). That the shelters might receive state funds—even a significant amount—or are regulated by the state does not render them state actors because Smith does not allege that the funding and regulation compelled or even encouraged the challenged actions. *See id.* at 814–16; *Rendell-Baker*, 457 U.S. at 840–41. Smith’s reliance on federal funding and oversight is even further afield and has no bearing on whether the shelters are acting under color of *state* law. *See L.P. v. Marian Cath. High Sch.*, 852 F.3d 690, 696–97 (7th Cir. 2017).

Beyond his funding arguments, Smith emphasizes that the shelters often call the police to remove residents who violate rules. But calling the police, even frequently, does not make one a state actor, absent allegations of a common scheme to violate constitutional rights. *See Spiegel v. McClintic*, 916 F.3d 611, 616–17 (7th Cir. 2019). Without a plausible allegation of state action, the district judges correctly found Smith did not state a claim under § 1983, the only theory of liability he has advanced.

AFFIRMED