

NONPRECEDENTIAL DISPOSITION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 September 11, 2024*

Decided September 16, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-1158

ANTONIA M. GONZALEZ-NUNEZ,
Plaintiff-Appellant,

v.

WISCONSIN DEPARTMENT OF
HEALTH SERVICES,
Defendant-Appellee.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 24-C-0077

Lynn Adelman,
Judge.

ORDER

Antonia Gonzalez-Nunez sued the Wisconsin Department of Health Services under 42 U.S.C. § 1983. The district judge correctly dismissed her suit for failure to state a claim against a “person” under § 1983; thus we affirm.

* We have agreed to decide the case without oral argument because the appeal is frivolous. FED. R. APP. P. 34(a)(2)(A).

Gonzalez-Nunez alleged that she was not receiving prescriptions to treat her chronic pain and filed this suit to find out if the Department was to blame. The district judge granted her motion to proceed in forma pauperis and screened her suit under 28 U.S.C. § 1915(e)(2)(B)(ii). He then explained that Gonzalez-Nunez could not use a federal suit to investigate possible claims. In any case, because the Department was not a “person” for the purposes of § 1983, the judge concluded that any amendment against the Department would be futile and dismissed the suit with prejudice.

On appeal, Gonzalez-Nunez contends that the Department is to blame for her difficulty in securing her pain medication, among other accusations, but she does not meaningfully address the district judge’s reasoning that the suit fails because the Department is not a “person” who can be sued under § 1983. We are mindful of Gonzalez-Nunez’s pro se status, *see Atkins v. Gilbert*, 52 F.4th 359, 361 (7th Cir. 2022) (citing *Anderson v. Hardman*, 241 F.3d 544, 545–46 (7th Cir. 2001)), but she is still required to comply with Rule 28(a) of the Federal Rules of Appellate Procedure by challenging the district judge’s analysis. *Anderson*, 241 F.3d at 545–46; FED. R. APP. P. 28(a). Because she has not, we could dismiss her appeal. *Id.* Still, we prefer 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), and we can do so here. A plaintiff may invoke § 1983 only against a “person.” 42 U.S.C. § 1983. But a state is not a “person” under § 1983, and the department of a state is equivalent to the state and therefore not a “person.” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989). Thus, the district judge rightly ruled that Gonzalez-Nunez cannot use § 1983 to sue the Department.

We conclude with the matter of sanctions. Gonzalez-Nunez filed this appeal, which we consider frivolous, before we warned her in *Gonzalez-Nunez v. Verser*, 2024 WL 1635255, at *1 (7th Cir. Apr. 16, 2024), that frivolous appeals may result in sanctions, including fines, that, if unpaid, may result in a filing bar. *See Support Sys. Int’l, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995). Because this appeal preceded that warning, we decline to impose sanctions now, but we remind Gonzalez-Nunez that our warning about filing frivolous appeals in the future remains in full force, and includes the possibility of monetary fines (that if unpaid may lead to a filing bar) or other sanctions.

AFFIRMED