

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CAROLYN WENDY HERZ,)	
)	No. 1:20-cv-01877-JPH-DLP
Plaintiff,)	
)	
v.)	
)	
RICHARD L. YOUNG,)	
INDIANA FAMILY AND SOCIAL)	
SERVICES ADMINISTRATION,)	
ATTORNEY GENERAL FOR THE STATE)	
OF INDIANA,)	
EVAN GOODMAN,)	
FEDERAL COMMUNICATIONS)	
COMMISSION,)	
ERIC HOLCOMB,)	
DENNIS SASSO,)	
SANDY SASSO,)	
LESLIE PAGE,)	
ASCENSION HEALTH, INC.)	
JACQUELINE HOBBS,)	
)	
Defendants.)	

ORDER DISMISSING ACTION AND DIRECTING FINAL JUDGMENT

This action was removed from the Marion Superior Court on July 15, 2020, where it had been filed under Cause No. 49D06-2006-CT-021101 on June 25, 2020. See Filing No. 1 (citing 28 U.S.C. §§ 1442(a) (civil actions brought against the United States, its officers, or agencies may be removed to the United States District Court)).

Plaintiff Carolyn Wendy Herz is the same person as Carolyn H. Srivastava, a restricted filer in this Circuit and in this Court as explained in

this Court's order of July 29, 2020.¹ Filing No. 8. That Order stayed these proceedings and directed Ms. Herz to show cause no later than August 13, 2020 why this action should not be dismissed because restrictions have been imposed on her ability to file papers in all federal courts in the Seventh Circuit.

On August 7, 2020, Ms. Herz filed her response, in which she included a motion requesting that the Court remand the case to state court. In support of her request, Ms. Herz contends that certain procedural deficiencies in the removal of the case make remand a "viable option." Filing No. 9 at 7. Specifically, Ms. Herz alleges that the removing defendant did not properly serve her and certain other plaintiffs with the Notice of Removal filed in state court. On August 21, 2020, the removing defendant responded, contending that he followed the proper procedure and that no basis for remand exists. Ms. Herz filed a reply on August 31, 2020.

To the extent Ms. Herz contends that the defendant's alleged failure to serve her with a document filed in state court constitutes a defect in the removal procedure, she cites no authority for such an argument. Additionally, she does not assert she was unaware of the removal or suffered any other prejudice. Further, as Ms. Herz observes, any such defect would be procedural. It would not deprive the Court of jurisdiction and does not warrant remand. *Cf., e.g., Walton v. Bayer Corp.*, 643 F.3d 994, 998-99 (7th Cir. 2011) (finding no impediment to district court adjudicating case where summonses

¹ See also *Herz v. Hamilton*, No. 4:17-CV-00090-JVB (N.D. Ind. Jan. 18, 2018) (citing *Herz v. Hamilton*, 2015 WL 1224516 *1 (S.D. Ind. Mar. 17, 2015)).

were not timely filed with removal papers as required by 28 U.S.C. § 1446(a)); *Riehl v. Nat'l Mut. Ins. Co.*, 374 F.2d 739, 742 (7th Cir. 1967) (finding removal notice unaccompanied by complaint was effective where omission "was but a minor irregularity of no consequence" and where "[t]he basic purpose of the § 1446(a) directive was neither frustrated nor unfulfilled"). The removal stands.

Ms. Herz's response to this Court's show cause order does not demonstrate that (a) her restricted filer status as referenced above has been altered or does not apply to the present action, (b) she could prosecute this action through the filing of documents in light of her restricted filer status, or (c) there is any reason to delay entry of final judgment.

The Court finds that the orders making Ms. Herz a restricted filer prevent her from filing documents in this case. Because Ms. Herz cannot proceed, this action is **DISMISSED** for failure to prosecute. To prevent further abusive litigation by Plaintiff, this dismissal is with prejudice.

Judgment consistent with this Order shall now issue.

SO ORDERED.

Date: 9/8/2020



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution by U.S. Mail to:

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Distribution to electronically registered counsel via ECF