

Nos. 22-3083, et al.  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Nov 21, 2022  
DEBORAH S. HUNT, Clerk

ROBERT SINGER, Individually and as )  
Administrator of the Estate of Gloria A. Singer, )  
et al. (22-3083), )

Plaintiffs-Appellees, )

v. )

MONTEFIORE, et al., )

Defendants-Appellants. )

ORDER

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ROBERT SINGER, Individually and as )  
Administrator of the Estate of Gloria A. Singer )  
(22-3084), )

Plaintiff-Appellee, )

v. )

MONTEFIORE, et al., )

Defendants-Appellants. )

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RANDY ROSEN, Administrator of the Estate )  
of Rita Rosen (22-3170), )

Plaintiff-Appellee, )

v. )

MONTEFIORE, et al., )

Defendants-Appellants. )

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RUBY CONNER, Administrator of the Estate )  
of Frank S. Conner (22-3172), )

Plaintiff-Appellee, )

v. )

MONTEFIORE, et al., )

Defendants-Appellants. )

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ETHEL BURRIS, Individually and as Executrix )  
of the Estate of Leonard F. Burris (22-3456), )

Plaintiff-Appellee, )

v. )

MONTEFIORE, et al., )

Defendants-Appellants. )

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KEITH SPRING, Administrator of the Estate of )  
James Spring (22-3457), )

Plaintiff-Appellee, )

v. )

MONTEFIORE HOME, et al., )

Defendants-Appellants. )

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Nos. 22-3083, et al.

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MARIE WIMBERLY, Administrator of the )  
Estate of Vivian C. Wilson (22-3458), )

Plaintiff-Appellee, )

v. )

MONTEFIORE, et al., )

Defendants-Appellants. )

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MARGARET FRIEDMAN, Executor of the )  
Estate of Mary L. Friedman (22-3703), )

Plaintiff-Appellee, )

v. )

MONTEFIORE, et al., )

Defendants-Appellants. )

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THOMAS NEMETH, Executor of the Estate of )  
Anthony Berardinelli (22-3855), )

Plaintiff-Appellee, )

v. )

MONTEFIORE, et al., )

Defendants-Appellants. )

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CHARLES J. LEVERT, II, Personal	)
Representative of the Estate of Charles J.	)
Levert, Sr. (22-3876),	)
	)
Plaintiff-Appellee,	)
	)
v.	)
	)
MONTEFIORE HOME, et al.,	)
	)
Defendants-Appellants.	)

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Before: NORRIS, MOORE, and GILMAN, Circuit Judges.

Menorah Park is an organization comprising two senior healthcare and residential facilities, Montefiore and the eponymous Menorah Park. Following an alleged COVID-19 testing falsification incident at Montefiore, family members of the deceased filed wrongful death and survivorship actions in state court against Montefiore, Menorah Park, and subsidiary entities; Montefiore’s former administrator, Ariel Hyman; and two Montefiore nurses (“Defendants”). Defendants separately removed the cases of Plaintiffs Nicholas Laudato, Robyn Finkenthal Kulbarsh, Steven A. Ross, Robert Singer, Randy Rosen, Ruby Conner, Ethel Burris, Keith Spring, Marie Wimberly, Margaret Friedman, Thomas Nemeth, and Charles J. Levert, II to federal court. Defendants’ separate notices of removal resulted in twenty-one federal actions assigned to different district judges in the Northern District of Ohio. The district court granted Plaintiffs’ motions to remand in each case, resulting in these appeals.

Defendants moved to stay enforcement of the remand orders, which the district court granted. In doing so, the district court vacated the judgments, reinstated the federal actions, and/or recalled the papers delivered to the state court in all but one case. On appeal, the clerk ordered Defendants to show cause why *Singer, et al.*, Nos. 22-3083/3084; *Rosen*, No. 22-3170; *Conner*,

Nos. 22-3083, et al.

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No. 22-3172; *Burris*, No. 22-3456; *Spring*, No. 22-3457; and *Wimberly*, No. 22-3458, should not be dismissed for lack of jurisdiction based on the district court's vacatur or recall of the remands, or as precluded under 28 U.S.C. § 1447(d). Presently before us are Defendants' responses to the show cause orders and Plaintiffs' motion to dismiss for lack of jurisdiction the appeals in *Singer, et al.*, Nos. 22-3083/3084. The appeals in *Friedman*, No. 22-3703; *Nemeth*, No. 22-3855; and *Lever*, No. 22-3876, are before us on *sua sponte* jurisdictional review.

We have jurisdiction to review final orders of the district court under 28 U.S.C. § 1291. Section 1447(d) limits our appellate jurisdiction where remand orders are concerned: "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d). The statute contemplates two exceptions: "an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 . . . shall be reviewable by appeal or otherwise." *Id.* The Supreme Court has clarified that if either § 1442 or § 1443 was invoked in the underlying notice of removal, a remand order is reviewable in its entirety on appeal. *BP P.L.C. v. Mayor & City Council of Balt.*, 141 S. Ct. 1532, 1536–37, 1543 (2021).

The cases before us involve four distinct removal postures. First, Montefiore and Menorah Park removed the *Conner* case pursuant to a notice of removal invoking only federal-question jurisdiction, § 1441(a). *Conner ex rel. Conner v. Montefiore*, No. 21-cv-2108 (N.D. Ohio filed Nov. 8, 2021). The remaining Defendants consented to the removal and no further notice of removal was filed. Because the case was removed under only § 1441(a), we lack jurisdiction to review the district court's remand order in *Conner*, No. 22-3172. *See* 28 U.S.C. § 1447(d).

Second, Montefiore and Menorah Park removed the *Lever* case pursuant to a notice of removal invoking both federal-question jurisdiction, § 1441(a), and the federal officer removal statute, § 1442(a)(1). *Lever ex rel. Lever v. Montefiore Home*, No. 21-cv-2312 (N.D. Ohio filed Dec. 9, 2021). The remaining Defendants consented to the removal and no further notice of removal was filed. Because the case was removed in part under § 1442(a)(1), we have jurisdiction

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to review the district court's remand order in *Lever*, No. 22-3876. *See* 28 U.S.C. § 1447(d); *BP*, 141 S. Ct. at 1536–37.

Third, Montefiore and Menorah Park removed the *Laudato*, *Kulbarsh*, *Ross*, *Singer*, *Rosen*, *Burris*, *Spring*, *Wimberly*, and *Nemeth* cases pursuant to notices of removal invoking only federal-question jurisdiction, § 1441(a). *See Laudato ex rel. Kenney v. Montefiore*, No. 21-cv-2106 (N.D. Ohio filed Nov. 5, 2021); *Kulbarsh ex rel. Finkenthal v. Montefiore*, No. 21-cv-2105 (N.D. Ohio filed Nov. 5, 2021); *Ross v. Montefiore*, No. 21-cv-2103 (N.D. Ohio filed Nov. 5, 2021); *Singer v. Montefiore*, No. 21-cv-2102 (N.D. Ohio filed Nov. 5, 2021); *Rosen ex rel. Rosen v. Montefiore*, No. 21-cv-2104 (N.D. Ohio filed Nov. 5, 2021); *Burris v. Montefiore*, No. 21-cv-2107 (N.D. Ohio filed Nov. 5, 2021); *Spring ex rel. Spring v. Montefiore Home*, No. 21-cv-2098 (N.D. Ohio filed Nov. 5, 2021); *Wimberly ex rel. Wilson v. Montefiore*, No. 21-cv-2097 (N.D. Ohio filed Nov. 5, 2021); *Nemeth ex rel. Berardinelli v. Montefiore*, No. 21-cv-2064 (N.D. Ohio filed Nov. 1, 2021). The remaining Defendants, including Hyman, consented to the removals.

After each case had been removed, however, Hyman filed a separate notice of removal purporting to remove the same case under federal-question jurisdiction, § 1441(a), and the federal officer removal statute, § 1442(a)(1). *See Laudato ex rel. Kenney v. Montefiore*, No. 21-cv-2120 (N.D. Ohio filed Nov. 8, 2021); *Kulbarsh ex rel. Finkenthal v. Montefiore*, No. 21-cv-2125 (N.D. Ohio filed Nov. 8, 2021); *Ross v. Montefiore*, No. 21-cv-2148 (N.D. Ohio filed Nov. 11, 2021); *Singer v. Montefiore*, No. 21-cv-2149 (N.D. Ohio filed Nov. 11, 2021); *Rosen ex rel. Rosen v. Montefiore*, No. 21-cv-2142 (N.D. Ohio filed Nov. 10, 2021); *Burris v. Montefiore*, No. 21-cv-2143 (N.D. Ohio filed Nov. 10, 2021); *Spring ex rel. Spring v. Montefiore Home*, No. 21-cv-2124 (N.D. Ohio filed Nov. 8, 2021); *Wimberly ex rel. Wilson v. Montefiore*, No. 21-cv-2126 (N.D. Ohio filed Nov. 8, 2021); *Nemeth ex rel. Berardinelli v. Montefiore*, No. 21-cv-2066 (N.D. Ohio filed Nov. 1, 2021). But Hyman's separate notices of removal had no legal effect, because the cases had already been removed to federal court. *See Williams v. Costco Wholesale Corp.*, 471

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F.3d 975, 976–77 (9th Cir. 2006) (per curiam); *Yarnevic v. Brink's, Inc.*, 102 F.3d 753, 755 (4th Cir. 1996). Because the operative notices of removal invoked only § 1441(a), we lack jurisdiction to review the district court's remand orders in *Singer, et al.*, Nos. 22-3083/3084; *Rosen*, No. 22-3170; *Burris*, No. 22-3456; *Spring*, No. 22-3457; *Wimberly*, No. 22-3458; and *Nemeth*, No. 22-3855. See 28 U.S.C. § 1447(d); *BP*, 141 S. Ct. at 1536–37, 1543.

Finally, Montefiore and Menorah Park removed the *Friedman* case pursuant to a notice of removal invoking only federal-question jurisdiction, § 1441(a). *Friedman ex rel. Friedman v. Montefiore*, No. 21-cv-2083 (N.D. Ohio filed Nov. 3, 2021). Menorah Park later filed an amended notice of removal invoking federal-question jurisdiction, § 1441(a), and the federal officer removal statute, § 1442(a)(1). The remaining Defendants consented to the initial and amended notices of removal, and Plaintiff raised no procedural objections to the amendment below. Because the case was removed in part under § 1442(a)(1), we have jurisdiction to review the district court's remand order in *Friedman*, No. 22-3703.

Accordingly, the motion to dismiss the appeals in *Singer, et al.*, Nos. 22-3083/3084, is **GRANTED**, and those appeals are **DISMISSED** for lack of jurisdiction. The appeals in *Rosen*, No. 22-3170; *Conner*, No. 22-3172; *Burris*, No. 22-3456; *Spring*, No. 22-3457; and *Wimberly*, No. 22-3458, are **DISMISSED** for lack of jurisdiction. The appeal in *Nemeth*, No. 22-3855, is **DISMISSED**, *sua sponte*, for lack of jurisdiction. The clerk is directed to issue a briefing schedule in *Friedman*, No. 22-3703, and *Levert*, No. 22-3876, which shall proceed in the normal course.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk