

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 12-3441

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David H. McDowell

*Plaintiff - Appellant*

v.

Tankinetics, Inc.; William K. Angle; Strand Composite Engineering &  
Construction, LLC; St. Clair P. Guess, III; William F. Schwarz; Robert W. McManus

*Defendants - Appellees*

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Appeal from United States District Court  
for the Western District of Arkansas - Harrison

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Submitted: May 16, 2013  
Filed: May 20, 2013  
[Unpublished]

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Before WOLLMAN, BOWMAN, and GRUENDER, Circuit Judges.

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PER CURIAM.

David McDowell appeals the district court's<sup>1</sup> dismissal of his employment-discrimination action as untimely. We agree with the court that the complaint is untimely, because (1) it was filed well in excess of the applicable limitations period, see 29 U.S.C. § 626(e); Hallgren v. United States Dep't of Energy, 331 F.3d 588, 589 (8th Cir. 2003) (failure to file suit within 90 days of receiving notice of final agency action renders employment-discrimination action untimely); (2) the prior state court suit, which was removed to federal court and dismissed without prejudice, does not save the instant suit from a dismissal for untimeliness, see Gerhardson v. Gopher News. Co., 698 F.3d 1052, 1056 (8th Cir. 2012); and (3) McDowell failed to demonstrate that he was entitled to equitable tolling, see Hallgren, 331 F.3d at 590.

The judgment is affirmed. See 8th Cir. R. 47B.

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<sup>1</sup>The Honorable P.K. Holmes, III, Chief Judge, United States District Court for the Western District of Arkansas.