

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

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No. 15-3040

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Ronald Cherry

*Plaintiff - Appellant*

v.

Southern Refrigerated Transport

*Defendant - Appellee*

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

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Submitted: December 2, 2016

Filed: December 9, 2016

[Unpublished]

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Before SMITH, ARNOLD, and COLLOTON, Circuit Judges.

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PER CURIAM.

Ronald Cherry appeals after the district court<sup>1</sup> dismissed his Title VII complaint as barred by the statute of limitation, 42 U.S.C. § 2000e-5(f)(1) (providing 90-day limitation period to run from notice of dismissal of charge of discrimination). Both in the district court and on appeal, Mr. Cherry has maintained that equitable tolling should be applied, in light of an earlier action that was dismissed without prejudice. After carefully reviewing the record and the parties' arguments on appeal, we conclude that the district court's decision was proper. See Richter v. Advance Auto Parts, Inc., 686 F.3d 847, 851 (8th Cir. 2012) (explaining application of statute of limitation); cf. Garfield v. J.C. Nichols Real Estate, 57 F.3d 662, 666 (8th Cir. 1995) ("A dismissal without prejudice does not toll a statute of limitation."). Accordingly, we affirm. See 8th Cir. R. 47B.

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<sup>1</sup>The Honorable Susan O. Hickey, United States District Judge for the Western District of Arkansas, adopting the report and recommendation of the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas.