

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

DANIEL GALLO

PLAINTIFF

v.

No. 4:11-cv-640-DPM

DILLARD'S, INC.

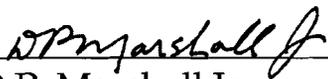
DEFENDANT

ORDER

Gallo's Title VII complaint against Dillard's is dismissed as time barred. Despite the clear warning in the EEOC's "Notice of Right to Sue" letter that Gallo received on 14 May 2011, he did not file this lawsuit within the statutory ninety-day period. 42 U.S.C. § 2000e-5(f)(1). Although this limitation period may be tolled in "appropriate circumstances," *Hill v. John Chezik Imports*, 869 F.2d 1122, 1124 (8th Cir. 1989), none of the recognized circumstances that may warrant tolling are present here. *E.g., Hallgren v. United States Department of Energy*, 331 F.3d 588, 590 (8th Cir. 2003) (an ADEA case). As Gallo's response to the motion to dismiss reveals, he knew about his ninety-day window and no circumstances "out of his hands" caused him to miss that deadline. *Ibid.*

Dillard's motion to dismiss, *Document No. 9*, is therefore granted; Gallo's untimely complaint is dismissed with prejudice. The motion to appoint counsel, *Document No. 11*, is denied as moot.

So Ordered.

  
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D.P. Marshall Jr.  
United States District Judge

11 October 2011