

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

RONALD CHERRY

PLAINTIFF

v.

Case No. 4:15-cv-04039

SOUTHERN REFRIGERATED TRANSPORT

DEFENDANT

**ORDER**

Before the Court is the Report and Recommendation filed July 13, 2015, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 16). Judge Bryant recommends Defendant's Motion to Dismiss (ECF No. 8) be granted. Plaintiff Ronald Cherry has filed a Motion to Reconsider. (ECF No. 17). The Court has interpreted this document as a timely objection to the Report and Recommendation and will consider it as such.

Plaintiff filed his first lawsuit against Defendant on October 15, 2013. After Plaintiff failed to comply with Orders of the Court, his Complaint was dismissed without prejudice on April 27, 2015. On the same day, Plaintiff filed this Complaint pro se against Defendant with identical claims, along with claims of hostile work environment. He attached a July 15, 2013 Notice of Right to Sue letter to the Complaint. Defendant filed a Motion to Dismiss, alleging failure to state a claim and insufficient service of process. Judge Bryant recommends a finding that the limitations period has run, and accordingly the untimely Complaint should be dismissed with prejudice under Federal Rule of Civil Procedure 12(b)(6).

Cherry argues that the dismissal should be without prejudice instead of with prejudice because he has presented facts that would support his claim. However, demonstrating that a claim is or may be meritorious cannot save it from dismissal if the statute of limitations on the claim has

run. After thorough review of the submissions of parties, the Court finds that Plaintiff's claim is time barred and should be dismissed with prejudice under Federal Rule of Civil Procedure 12(b)(6). *Wycoff v. Menke*, 773 F.2d 983, 984-85 (8th Cir. 1985) (when it appears from face of complaint itself that limitation period has run, limitations defense may properly be asserted through Fed.R.Civ.P. 12(b)(6) motion to dismiss).

The Court adopts the Report and Recommendation *in toto*. Accordingly, the Defendant's Motion to Dismiss (ECF No. 8) is hereby **GRANTED**. Plaintiff's Complaint (ECF No. 1) is **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED**, this 3rd day of August, 2015.

/s/ Susan O. Hickey  
Susan O. Hickey  
United States District Judge