

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 30, 2011

No. 11-60484
Summary Calendar

Lyle W. Cayce
Clerk

CLAVER J. SMITH,

Plaintiff–Appellant

v.

ALCORN STATE UNIVERSITY,

Defendant–Appellee

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:10-CV-198

Before REAVLEY, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Claver Smith, the Appellant, alleges that Alcorn State University, the Appellee, unlawfully discriminated against her based on her age in violation of the Age Discrimination in Employment Act (“ADEA”), specifically 29 U.S.C. § 623(a). Smith filed a claim with the Equal Employment Opportunity Commission (“EEOC”) on September 23, 2009. On August 23, 2010, the EEOC issued Smith a right-to-sue letter. Smith did not, however, file her suit until

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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December 16, 2010—116 days after the issuance of the right-to-sue letter. The Appellee filed a motion to dismiss based on Eleventh Amendment immunity and a motion for summary judgment based on the time bar. The district court granted both motions.

“A plaintiff alleging employment discrimination must file a civil action no more than ninety days after she receives statutory notice of her right to sue from the EEOC. The ninety-day window is strictly construed and is a precondition to filing suit in district court.” *Duron v. Albertson’s LLC*, 560 F.3d 288, 290 (5th Cir. 2009) (internal quotation marks, citations, and footnotes omitted). Smith claims that she filed her suit on November 22, 2010 (within the ninety-day window), but there is no evidence in the record to support this. We therefore AFFIRM the district court’s grant of summary judgment to the Appellee.

AFFIRMED.