

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4925
Summary Calendar

TERRI L. EILERTS,

Plaintiff-Appellant,

VERSUS

UNITED PARCEL SERVICE, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-2308)

(November 17, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

The sole issue in this appeal is whether Eilerts's claim against United Parcel Service under Title VII and 42 U.S.C. § 1981 is time-barred. Eilerts filed a timely action in October 1991 which was dismissed without prejudice for insufficiency of service as required by Fed. R. Civ. P. 4(J). Plaintiff then refiled her suit in December 1992 and perfected service in January 1993. The

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

latter action is admittedly time-barred unless the first action tolled the limitation period.

We agree with the district court that the dismissal without prejudice of the first action has the effect of placing the plaintiff in the same position she would have been had she never filed the first suit. **See Hilbun v. Goldberg**, 823 F.2d 881, 883 (5th Cir. 1987), and **Norlock v. City of Garland**, 768 F.2d 654, 658 (5th Cir. 1985).

The district court, therefore, correctly dismissed this action as time-barred.

AFFIRMED.