

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-2566

ABIODUN AKINRINADE,

Plaintiff - Appellant,

versus

SERVICE AMERICA CORPORATION,

Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Frederic N. Smalkin, District Judge. (CA-98-3223-S)

Submitted: March 31, 2000

Decided: April 25, 2000

Before WIDENER, MURNAGHAN, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Norris C. Ramsey, NORRIS C. RAMSEY, P.A., Baltimore, Maryland, for Appellant. Jeffrey P. Ayres, VENABLE, BAETJER & HOWARD, L.L.P., Towson, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Abiodun Akinrinade appeals from the district court's order granting Service America Corporation's motion to dismiss and dismissing with prejudice her employment discrimination action as time-barred. Because we find that Akinrinade failed to show good cause to justify extending the 120-day period for serving process upon Service America Corporation and her claims are now time-barred, we find that the district court did not abuse its discretion in dismissing the action with prejudice. See Fed. R. Civ. P. 4(m); Mendez v. Elliot, 45 F.3d 75, 78 (4th Cir. 1995)(Fed. R. Civ. P. 4(m) does not provide relief from time defenses such as statute of limitations). Consequently, we affirm.* We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

* Where, as in this case, the district court considered matters outside the pleadings, it should have treated the motion as a motion for summary judgment. See Gay v. Wall, 761 F.2d 175, 177 (4th Cir. 1985). Any error was harmless because Akinrinade was on notice of the possible conversion due to the attachment of exhibits to the motion to dismiss, and even on appeal makes no claim that she would have been able to establish a dispute of material fact by counter-affidavits or discovery if she had known the motion to dismiss was being converted to a motion for summary judgment.