

No Copyright for Banana Lady's Performance

Seventh Circuit Judge Richard Posner is no second banana to the Banana Lady.

Not only did Judge Posner write an opinion affirming the dismissal of the Banana Lady's copyright infringement lawsuit, but he also peeled back her long history of filing frivolous lawsuits and failure to pay judgments against her.

Catherine Conrad is a self-employed singer and dancer, calls herself Banana Lady, and performs wearing a costume in the shape of a giant banana. In case anyone cannot envision a banana lady, Judge Posner included a photo of her with his opinion.



Ms. Conrad sued several credit unions and a trade association for infringements of her intellectual property. The trial court found that all her claims but the copyright claim were precluded by an earlier suit and then dismissed the copyright claim, which was the only claim before the Seventh Circuit.

Ms. Conrad claims that several members of the audience posted pictures and videos of her in her costume on their Facebook, as well as other internet pages. She said this violated her agreement with the arrangers for her performance, which provided that any photos or videos could be used for only "personal use," which she believed excluded posting on Facebook.

Judge Posner noted that while Ms. Conrad had copyrights for her in a banana costume as well as the banana costume, the "performance itself was not copyrighted or even copyrightable, not being 'fixed in any tangible medium for expression.'"

"She had, it is true, authorized the arrangers for the trade association event to permit the members of the audience to take photos, or make videos, for their personal use," the opinion stated. "But that was a limited license. We don't know how limited; but maybe it didn't authorize posting photos or videos on the internet, or at least on some of the internet sites on which they were posted; and in that event such posting may have violated the provision of the Copyright Act that forbids unauthorized video or tape recording of a musical performance." However, the court found, she did not sue under that provision and her "suit has no merit."

Judge Posner didn't stop there. He noted that she has filed at least eight lawsuits in federal court since 2009 and nine cases in state court since 2011 and "she appears not to have won any judgments." He observed, however, that Ms. Conrad was ordered to pay \$55,000 in costs and

fees in one federal case, she was sanctioned at least \$23,000 in her state cases, and “possibly” \$73,000 more in one of the suits. Judge Posner suggested that the district court, rather than allow her to continue to file new lawsuits, “it should consider enjoining her from filing further suits until she pays her litigation debts.”

Conrad v. AM Community Credit Union, Seventh Cir. No. 13-2899, issued April 14, 2014.