No Monkeying Around with this Opinion – Naruto v. Slater, No. 16-15469, 2018 WL 1902414 (9th Cir. Apr. 23, 2018)

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In case you are curious about the extent of animal rights under the law, take a look at this new decision in the Ninth Circuit, *Naruto v. Slater*, 2018 WL 1902414 (9th Cir. Apr. 23, 2018). Naruto, an Indonesian macaque, picked up a camera that was left unattended in a reserve by David Slater, a photographer, and took some selfies back in 2011. The pictures were apparently worthy of publication, so Mr. Slater published them in 2014. The monkey sued. Well, actually, the People for the Ethical Treatment of Animals, Inc. ("PETA") sued as Naruto's Next Friend, for copyright infringement. The case worked its way to the Court of Appeals for the Ninth Circuit, where the court framed the issue this way:

We must determine whether a monkey may sue humans, corporations, and companies for damages and injunctive relief arising from claims of copyright infringement. Our court's precedent requires us to conclude that the monkey's claim has standing under Article III of the United States Constitution. Nonetheless, we conclude that this monkey—and all animals, since they are not human—lacks statutory standing under the Copyright Act. We therefore affirm the judgment of the district court.

Naruto v. Slater, No. 16-15469, 2018 WL 1902414 (9th Cir. Apr. 23, 2018) (footnote omitted).

The defendants in the lawsuit moved to dismiss on the grounds that the complaint did not state facts sufficient to establish standing under Article III or statutory standing under the Copyright Act. The district court granted the motion, ruling that Naruto failed to establish statutory standing under the Copyright Act. The appeal followed.

Expressing grave doubt that PETA could serve as next friend to a monkey because PETA could not establish that it had any relationship with Naruto that is any more significant than its relationship with any other animal, the court nonetheless relied on prior precedent and considered the merits. Citing to *Cetacean Cmty. v. Bush*, 386 F.3d 1169 (9th Cir. 2004), the court found that Naruto's lack of a next friend did not destroy his standing to sue, as having a "case or controversy" under Article III of the Constitution. The court noted that *Cetacean* did not rely on the fact that the statutes at issue in that case referred to "persons" or "individuals."

Instead, the court crafted a simple rule of statutory interpretation: if an Act of Congress plainly states that animals have statutory standing, then animals have statutory standing. If the statute does not so plainly state, then animals do not have statutory standing. The Copyright Act does not expressly authorize animals to file copyright infringement suits under the statute. Therefore, based on this court's precedent in *Cetacean,* Naruto lacks statutory standing to sue under the Copyright Act.

Naruto v. Slater, *supra,* 2018 WL 1902414 at *6 (footnotes omitted).

The court detailed an analysis of several provisions of the Copyright Act to explain its ruling, concluding:

The terms "children," "grandchildren," "legitimate," "widow," and "widower" all imply humanity and necessarily exclude animals that do not marry and do not have heirs entitled to property by law. Based on this court's decision in *Cetacean* and the text of the Copyright Act as a whole, the district court did not err in concluding that Naruto—and, more broadly, animals other than humans—lack statutory standing to sue under the Copyright Act.

Id. at *7 (9th Cir. Apr. 23, 2018).

In addition to ruling against PETA, the court remanded the case for a determination of appellate stage attorneys' fees and costs that would be owed to the appellees. So, Naruto got no copyright protection but his next friend owes attorneys' fees. Regardless of how that action turns out, I, for one, am happy to know that those favorite photos of my children's cats and dogs that I receive on a regular basis will not enable Jasper or Ella (the cats) or Yoho or Sadie (the dogs) to collect damages for copyright infringement.[1]

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[1] An opinion concurring in the conclusion that the case had to be dismissed examined, at length, the jurisdictional predicates implicated in next-friend cases. Concluding that next-friend standing is jurisdictional, the concurrence complained, *inter alia,* that the Majority missed the point in relying on *Cetacean*:

Not only did *Cetacean* not address animal next-friend standing, but no court has ever done so. *See Mount Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1448 n.13 (9th Cir. 1992) ("No party has mentioned and, notwithstanding our normal rules, we do not consider, the standing of the first-named party [Mount Graham Red Squirrel] to bring this action."); *Palila v. Hawaii Dep't of Land & Nat. Res*., 852 F.2d 1106, 1107 (9th Cir. 1988) ("As an endangered species …, the bird … also has legal status and wings its way into federal court as a plaintiff in its own right." (emphasis added)), *abrogated in part by, Cetacean*, 386 F.3d at 1173 (9th Cir. 2004) ("*Palila IV's* statements [regarding standing] are nonbinding dicta."); *Citizens to End Animal Suffering & Exploitation, Inc. v. New England Aquarium*, 836 F.Supp. 45, 49–50 (D. Mass. 1993) (finding named dolphin, Kama, lacked standing because "[t]he MMPA does not authorize suits brought by animals," and addressing the fact that Rule 17(b) would hold that animals lack "capacity" to be sued because they are property of their owners, concluding that "the MMPA and the operation of F.R.Civ.P. 17(b) indicate that Kama the dolphin lacks standing to maintain this action as a matter of law," and allowing "the removal of Kama's name from the caption of [the] case"); *Hawaiian Crow ('Alala) v. Lujan*, 906 F.Supp. 549, 551–52 (D. Haw. 1991) (finding that in *Northern Spotted Owl, Palila*, and *Mount Graham Red Squirrel*, no party had challenged the named standing of the animal itself and the case had other parties in the litigation and ultimately concluding that "the cited cases do not directly support plaintiffs' position here" and concluding that "the plain language of Rule 17(c) and section 1540(g) [did] not authorize the 'Alala to sue" because it was "clearly neither a 'person' as defined in section 1532(13), nor an infant or incompetent person under Rule 17(c)"); *Northern Spotted Owl v. Lujan,* 758 F.Supp. 621 (W.D. Wash. 1991) (failing to address standing for named first-party); *Northern Spotted Owl v. Hodel*, 716 F.Supp. 479 (W.D. Wash. 1988) (failing to address standing for named first-party).

Naruto v. Slater, No. 16-15469, 2018 WL 1902414, at *14 (9th Cir. Apr. 23, 2018).

Clearly, there is a sound basis to conclude that this appeal wasn't just "monkey business." The opinion is worth the read.