

**CCA and B, LLC v. F + W Media, Inc.,
819 F. Supp. 2d 1310 (N.D. Ga. 2011)**

Year	2011
Court	United States District Court for the Northern District of Georgia
Key Facts	Plaintiff CCA and B published a book titled <i>The Elf on the Shelf (Elf On)</i> , a popular children’s Christmas story that sold 1.5 million copies. The story depicted Santa monitoring who had been naughty or nice by sending out scout elves to observe broken rules and small acts of kindness. Defendant F + W Media published a book called <i>The Elf off the Shelf (Elf Off)</i> , which had a relatively raunchy elf narrator who used somewhat crude language, drank spiked eggnog, tried to woo Barbie while Ken was away, and watched pornography. The elf in <i>Elf Off</i> described himself as a “discount elf,” having been “sprung” from a discounted copy of <i>Elf On</i> . The books’ covers and jackets look relatively similar. Plaintiff alleged that defendant infringed its various copyright interests by spinning off the <i>Elf On</i> storyline and using similar images. Defendant argued that the book qualified as fair use because it was a parody.
Issue	Whether a story that used similar images, but a debauched version of character, from a children’s story constituted fair use as a parody.
Holding	The court held that the defendant’s use of plaintiff’s work was a fair use. The court found that <i>Elf Off</i> clearly served a commercial purpose, but this did not weigh heavily against defendant because the parody was directed to the underlying work. Furthermore, the court determined that <i>Elf Off</i> made a transformative use of the <i>Elf On</i> doll and images because it depicted the elf in an unromantic setting to demystify the magic of the <i>Elf On</i> elf. Regarding the nature of the use, the court held that the factor was neutral when the use was parody. The court also found that parodies required taking enough identifiable elements (essentially the heart) of the original to effectively comment on the original work. Therefore, the court held that the borrowed and modified elements were reasonable. Finally, there was no evidence that <i>Elf Off</i> affected the market for <i>Elf On</i> , and the court found it unlikely that someone would substitute the age-inappropriate <i>Elf Off</i> for the original children’s story.
Tags	Eleventh Circuit; Parody/Satire; Textual work
Outcome	Fair use found

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