


# 11th Circ. Remands Dancer's Tips Case Under Loper Bright

By **Irene Spezzamonte**

Law360 (November 4, 2024, 5:47 PM EST) -- The Eleventh Circuit on Monday sent back to a Georgia federal court an exotic dancer's suit claiming an Atlanta adult entertainment establishment illegally shared her tips with workers she said were managers, pointing to the U.S. Supreme Court's Loper Bright decision.

In a per curiam and unpublished **opinion**, a three-judge panel remanded the dancer's Fair Labor Standards Act suit back to the lower court, which had relied on the now-defunct Chevron doctrine when it granted International Follies Inc. summary judgment in 2023.

Under Chevron, courts could defer to a federal agency's reasonable interpretation of a law when the statute is ambiguous, but the Supreme Court **axed that concept** in its June decision in **Loper Bright Enterprises v. Raimondo** , in which the justices ruled that the doctrine improperly put the legal interpretations of the executive branch before those of the judicial branch.

"We express no position on Loper Bright's effect here and, instead, leave that question for the district court to address in the first instance," the panel said.

Bankruptcy trustee Tamara Ogier in 2021 lodged the suit against International Follies, which operates the Atlanta-based establishment called Cheetah, on behalf of the bankruptcy estate of Brittany Dakota Bosley.

The suit sought to recover wages allegedly owed to Bosley. It claimed that Cheetah fell short of paying Bosley's minimum wage after illegally sharing her tips with floor managers and "house moms." House moms interviewed prospective dancers and allowed them to leave a shift earlier, therefore exercising the control typical of an employer that prevented them from receiving tips, according to the complaint.

Under the FLSA, employers are allowed to pay tipped workers as low as \$2.13 per hour, as long as tips make up the difference between that amount and the federal minimum wage of \$7.25 per hour.

In March 2023, however, the district court turned down the complaint's arguments that the Chevron doctrine should not apply in order to define what represents a manager or a supervisor, saying that those definitions "appear in the FLSA, as amended, and the court does not find that the regulation is 'arbitrary, capricious, or manifestly contrary to the statute.'"

In relying on Chevron, the district court ruled that floor managers did not have the authority to hire or fire employees and could therefore be part of the tip pool. The lower court also rejected arguments that house moms should have stayed out of the tip pool because they were managers.

On appeal, Ogier argued on behalf of Bosley in a March filing that house moms were managers under the FLSA and that the lower court should not have applied Chevron.

On the other hand, Cheetah said in April that Ogier and Bosley were trying to convince the court "to rewrite the DOL's definition of 'managers or supervisors'" and that the lower court correctly applied Chevron.

After the briefing was completed, however, the Supreme Court handed down the Loper Bright

decision, and the parties recognized that the justices' ruling triggers a different standard that the lower court needs to follow, according to Monday's opinion.

Matthew W. Herrington of DeLong Caldwell Bridgers Fitzpatrick & Benjamin LLC, who is representing Ogier and Bosley, told Law360 on Monday that he was pleased the panel "is remanding the case to the district court to permit it to correct its mistake."

Herrington added that "now that Chevron is no more, we are even more confident that the district court will adopt our text-based interpretation of the FLSA's tip-sharing rule."

Andrea L. Pawlak of Schulten Ward Turner & Weiss LLP, who is representing Cheetah, told Law360 on Monday that "we are confident that the district court made the correct decision in granting summary judgment to International Follies previously and will do so again."

U.S. Circuit Judges Robin S. Rosenbaum, Britt C. Grant and Nancy G. Abudu sat on the panel for the Eleventh Circuit.

Ogier and Bosley are represented by Matthew W. Herrington and Charles R. Bridgers of DeLong Caldwell Bridgers Fitzpatrick & Benjamin LLC.

Cheetah is represented by Andrea L. Pawlak of Schulten Ward Turner & Weiss LLP.

The case is Tamara Ogier et al. v. International Follies Inc., case number 23-14225, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Nick Petruncio.