

Case Summary

Funky Films, Inc. v. Time Warner Entertainment Co., 462 F.3d 1072 (9th Cir. 2006)

Relevant Parties

Gwen O'Donnell and Funky Films, Inc, are the collective appellants in the case while Time Warner Entertainment Company, LP. and Home Box Office, known as "HBO," are the appellees.

Where Dispute is Taking Place

The dispute is taking place in the United States Court of Appeals for the Ninth Circuit.

Allegations

The appellants claim that "The Funk Parlor" and "Six Feet Under" are substantially similar and that the copyrights owned by the appellants, Funky Films and Gwen O'Donnell have unlawfully been infringed upon through access to the work.

Facts of the Case

In the time between 1997 and 1999, Gwen O'Donnell drafted the screenplay for, "The Funk Parlor," which was a story centered around a small funeral parlor in Connecticut. Shortly after, O'Donnell received medical care from a chiropractor, Stacey Smith, that he disclosed information regarding this screenplay to. Stacey Smith offered to show the script for, "The Funk Parlor" to her friend and President of the Original Programming at HBO, Chris Albrecht, at which Gwen O'Donnell agreed. The script was then provided to Stacey Smith. Three months later, an employee of Chris Albrecht called for the development of "Six Feet Under" for HBO.

The plot in, "The Funk Parlor" revolves around a small, family-owned funeral home following a tragic suicide that leaves the struggling parlor to the owner's two sons, John Jr. and Tom. There is also a romantic side plot through a relationship between Sophie and John. Through a plot twist, Sophie becomes a killer, with John as her intended victim, and after the murder of his brother, Tom, John kills Sophie and moves back to the city.

HBO's "Six Feet Under" focuses on a funeral home left to the returning son, Nate, who shares the business with his brother, David. Both brothers also have individual romantic side plots.

Gwen O'Donnell claimed similarity in both works as well as access by the appellees.

Timeline

In 1997 Gwen O'Donnell created a work named, "The Funk Parlor". Around the years of 1997 and 1999, Stacey Smith offered to give the screenplay to Chris Albrecht. Three months later, "Six Feet Under" began its creation. The case against the appellee's was filed on August 30, 2006. After the decision from the district level was appealed, The United States Court of Appeals decided on the case in 2006.

How was the Law Applied?

The substantial-similarity test found in copyright law was utilized, which includes both an extrinsic and intrinsic component. Only the extrinsic test was used because the intrinsic test focuses on how an ordinary person would view the similarities between two works, but this is specifically for a jury. Beyond this, in summary judgement, if a case does not satisfy the extrinsic test, the intrinsic cannot be tested, as a jury would have no reason to consider the work substantially similar without any objective proof of such. Defining the nature of extrinsic evidence, “The extrinsic test focuses on “articulable similarities between the plot, themes, dialogue, mood, setting, pace, characters, and sequence of events” *Sid & Marty Krofft Television Prods., Inc. v. McDonald’s Corp.*, 562 F.2d 1157, 1164 (9th Cir. 1977). Regarding proof of access by the appellees, which is another necessity when proving copyright infringement, the court found that no additional discovery regarding access was beneficial. They had only found minimal similarities between the works, and thus, access was irrelevant.

What was the Decision?

The Court focused only on utilizing extrinsic evidence, as there can be no case with solely intrinsic evidence in the absence of extrinsic. To assess the extrinsic evidence, The Court looked through three episodes of “Six Feet Under” and compared it to “The Funk Parlor”, the plot, characters, theme, mood, pace, dialogue, and event sequences were compared but found to be similar only at a general level. The Court did not find the two works to be substantially similar in ideas or how they were expressed.

While The Court initially saw many plot similarities with setting and initial hook, the court mentions the plots develop very differently. “Funk Parlor” has many side ploys such as additional murders and becomes somewhat of a murder mystery, whereas “Six Feet Under” does not. Characters were also considered, and it was determined there are very few similarities between them all. Both have a similar trope with a returning son but with different backgrounds, so they are also determined not similar. “Six Feet Under” has an additional central character that “The Funk Parlor” does not, which was found to significant when proving how they differ. The similarity in settings was also minimal, while the dialogue and sequence of events were found to differ greatly. This combination led them to conclude that there was not enough extrinsic evidence for similarity to be proven.

No copyright infringement was found, and the district court’s summary judgment was affirmed in the appellee’s, Warner Entertainment Company and Home Box Office’s, favor.

Outcome/Disposition

The district court’s summary judgment in appellees’ favor was affirmed by The United States Court of Appeals for the Ninth Circuit. No copyright infringement was found to exist based on a lack of extrinsic evidence.

What did I learn?

I learned that even while something seems similar on the surface and may parallel another work, that does not equate to infringement. I learned about the substantial similarity test that is utilized when considering infringement of a protected work, and the necessity of extrinsic evidence, as that can seemingly make or break the case, regardless of what a “normal person” views in terms of similarity.