

Stromback v. New Line Cinema

384 F.3d 283 (6th Cir. 2004)

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Alan Stromback brought suit in federal court against New Line Cinema ("NLC"), alleging copyright infringement, violation of the Lanham Act, commercial misappropriation, misappropriation of trade secrets, and tortious interference with prospective economic advantage. Stromback claimed NLC's movie "Little Nicky" infringed upon his poem "The Keeper." The district court granted summary judgment to NLC on all claims and the Sixth Circuit Court of Appeals affirmed.

In appealing the district court decision, Stromback first argued that the copyright infringement claim was improperly decided because the district court: (1) applied the wrong two-part test to determine similarity; (2) failed to allow expert testimony; (3) found the two works dissimilar; (4) did not consider NLC had access to Stromback's poem and screenplay and (5) failed to look at previous versions of the "Little Nicky" screenplay. The court rejected Stromback's claims. It found that despite using the wrong two-part test, the district court considered the protectable and unprotectable portions of Stromback's work and conducted an analysis similar to the appropriate test. Further, there was no difference in the factual findings between the test applied and the proper test.

The court also held an expert witness was not required, as there were no complex or technical questions at issue within the subject matter. In addition, it upheld the finding that "Little Nicky" and "the Keeper" were not similar, as many of the elements Stromback listed as similarities were common themes not protectable under the copyright act. Furthermore, the court rejected Stromback's argument that access to his poem and screenplay precluded the lack of similarity found in the copyright claim. Instead, the court held access to the work was not enough. There must be both access to the work and similarities between the two works in order to have infringement. Finally, the court held the district court did not err in failing to look at previous versions of the movie, as only infringing work presented to the public is considered under copyright law.

Next, Stromback argued the district court erred in granting summary judgment under Section 43 of the Lanham Act. The court affirmed the district court decision holding that if there was no substantial similarity for a copyright claim, there could be no Lanham Act claim. The court further reasoned that Stromback produced no evidence to distinguish between the copyright and Lanham Act claims and to prove there could be confusion between two dissimilar works.

Finally, Stromback argued that summary judgment was not appropriate on his three state law claims: commercial misrepresentation, misappropriation of trade secrets, and interference with prospective economic advantage. The court affirmed all three summary judgment rulings. The court held commercial misrepresentation was pre-empted by the copyright infringement finding of no substantial similarity, despite the time, effort, and money Stromback spent developing the screenplay. The court further held that the poem and screenplay Stromback produced were not trade secrets, as they had no independent economic value by being kept secret. Instead, the poem and screenplay were only valuable if public. In addition, the court stated, even if the screenplay and poem were trade secrets they were not misappropriated because they were not substantially similar. Finally, the court held the tortious

interference with prospective economic advantage claim was pre-empted by the copyright infringement claim because the works were “qualitatively different.” In doing so, the court rejected Stromback’s argument that his reputation in the film industry was a separate element distinct from the copyright infringement claim.

Accordingly, the Sixth Circuit Court of Appeals affirmed the summary judgment claims for copyright infringement, violation of the Lanham Act, commercial misrepresentation, misappropriation of trade secrets, and tortious interference with prospective economic advantage.