

CONSTANTINO BASILE, Plaintiff-Appellant,

v.

**SONY PICTURES ENTERTAINMENT INC., a Delaware corporation; et al.,
Defendants-Appellees.**

No. 14-56418.

United States Court of Appeals, Ninth Circuit.

Submitted February 14, 2017^[**].

Filed February 27, 2017.

Appeal from the United States District Court for the Central District of California; Dolly M. Gee, District Judge, Presiding, D.C. No. 2:14-cv-04264-DMG-JPR.

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

NOT FOR PUBLICATION

MEMORANDUM^[*]

Constantino Basile appeals pro se from the district court's order dismissing his action alleging that defendants' movie *Men in Black 3* infringed upon his copyrighted works "Crisis on Jupiter" and "The World of Jupiter." We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6), *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010), and we affirm.

The district court properly dismissed Basile's copyright infringement action because there is no substantial similarity, as a matter of law, between protected elements of Basile's copyrighted works and comparable elements of defendants' film, and any similarities in the general concepts are unprotected. See *Funky Films, Inc. v. Time Warner Entm't Co., L.P.*, 462 F.3d 1072, 1076-78 (9th Cir. 2006) (absent direct copying, a plaintiff must show substantial similarity to prevail on a copyright infringement claim); *Cavalier v. Random House, Inc.*, 297 F.3d 815, 823 (9th Cir. 2002) ("Scenes-a-faire, or situations and incidents that flow necessarily or naturally from a basic plot premise, cannot sustain a finding of infringement."); *Berkic v. Crichton*, 761 F.2d 1289, 1292-94 (9th Cir. 1985) (setting forth factors to determine substantial similarity).

Contrary to Basile's contention, the district court did not abuse its discretion in failing to consider evidence irrelevant to the dispositive legal issue of whether there was substantial

similarity between the works. See *Aceves v. Allstate Ins. Co.*, 68 F.3d 1160, 1164-66 (9th Cir. 1995) (setting forth standard of review and discussing relevance).

All pending motions and requests are denied.

AFFIRMED.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.