

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 17 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PATRICE EDWARDS,

No. 16-56043

Plaintiff-Appellant,

D.C. No. 2:16-cv-01014-ODW-
AGR

v.

CINELOU FILMS; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, II, District Judge, Presiding

Submitted August 9, 2017**

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

Patrice Edwards appeals pro se from the district court's judgment dismissing her copyright action. 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.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Edwards's request for oral argument, set forth in her opening brief, is denied.

The district court properly dismissed Edwards’s copyright infringement action because, as a matter of law, Edwards’s works titled “Witch” and defendants’ film *The Last Witch Hunter* are not substantially similar under the extrinsic test. *See Benay v. Warner Bros. Entm’t, Inc.*, 607 F.3d 620, 624 (9th Cir. 2010) (setting forth the extrinsic test to assess substantial similarity between specific expressive elements of copyrighted works, such as plot, sequence of events, themes, mood, setting, pace, and characters); *Funky Films, Inc. v. Time Warner Entm’t Co.*, 462 F.3d 1072, 1076-78 (9th Cir. 2006) (substantial similarity may be decided as a matter of law by applying the extrinsic test).

We do not consider matters not properly raised before the district court. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

Defendants’ request for judicial notice (Docket Entry No. 13) is denied.

AFFIRMED.