STATE OF MICHIGAN

COURT OF APPEALS

MELINDA GAVIN,

Plaintiff-Appellant,

v

RPS MANAGEMENT COMPANY,

Defendant-Appellee,

and

OAKWOOD CONSTRUCTION COMPANY,

Defendant.

UNPUBLISHED
August 30, 1996

No. 182379
LC No. 93-328765

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court orders granting summary disposition to RPS Management Company ("defendant") and denying her motion to amend her witness list. We affirm.

Plaintiff first argues that defendant is liable for her rape and beating because defendant negligently tolerated a dangerous condition at the parking lot site where she was assaulted. In *Stanley v Town Square Cooperative*, 203 Mich App 143, 150-151; 512 NW2d 51 (1993), this Court stated:

> The danger of falling victim to criminality in an open parking lot located outside a building is not a dangerous condition created by the possessor of the property, but is a dangerous condition inherent in the society in which we live. The risk of being criminally assaulted in the middle of the night in a poorly lit…parking lot…is real and certainly can be anticipated. However, that risk is as obvious and apparent to an invitee as it is to the landowner. In short, the danger to which invitees are exposed in a parking lot is the same danger to which they are exposed in the community at large….We find that a

* Circuit judge, sitting on the Court of Appeals by assignment.

> landlord does not owe a duty to invitees to make open parking lots safer than the adjacent public streets.

The Court further stated that a duty to take measures to protect invitees might be imposed "[i]f a landlord…has created a condition on the land presenting an unusual risk of criminal attack…." *Id.* at 151. However, "[t]his duty is limited…because we do not require the possessor of land to anticipate and protect against the general hazard of crime in the community." *Id.*

In support of its statement that a landlord's duty is limited, in any event, with respect to an open parking lot, the *Stanley* Court cited *Harkins v Northwest Activities Ctr, Inc*, 434 Mich 896; 453 NW2d 677 (1990). *Id.* In *Harkins, supra* at 896, the plaintiff argued that the defendant was liable because of a defective condition it allowed on its property, i.e., "a hole in the boundary fence that facilitated the assailant's entry, notwithstanding that the facility was open to the public and the assailant could have entered by other means." The Court reasoned:

> Plaintiff and the Court of Appeals have not identified any foreseeable hazard presented by the hole in the fence, other than the possibility that it could be acted upon by a third party in carrying out a criminal act. We perceive no distinction between requiring defendant to anticipate this hazard and requiring defendant to anticipate and protect against the general hazard of crime in the community. [*Id.*]

Accordingly, the Court held that the plaintiff's cause of action was precluded and reinstated the trial court's order granting summary disposition to the defendant. *Id.*

In the present case, plaintiff argues that defendant created a condition on the land presenting an unusual risk of criminal attack by failing to provide adequate lighting, fencing the parking lot, and allowing the accumulation of construction materials needed for the repair of a fire in the apartment complex. As in *Harkins*, however, with respect to these conditions, plaintiff has not identified any foreseeable hazard presented other than the possibility that they might be acted upon by a third party in carrying out a criminal act.[1] Accordingly, as in *Harkins*, we perceive no distinction between requiring defendant to anticipate the hazards about which plaintiff complains and requiring defendant to anticipate and protect against the general hazard of crime in the community. *Id.* Thus, summary disposition was properly granted to defendant.

Plaintiff, citing *Wagner v Regency Inn Corp*, 186 Mich App 158; 463 NW2d 450 (1990), also argues that a genuine issue of material fact existed as to whether a nuisance maintained by defendant was a proximate cause of her injuries,. However, in *Wagner*¸ there was ample evidence from which a factfinder could conclude that the defendant's toleration of a continuing pattern of criminal activity was a proximate cause of the plaintiff's injuries:

> Stolen cars, shootings, and calls to the police were almost daily occurrences. Prostitutes maintained rooms in the hotel on a daily basis. Drug trafficking was a constant problem with Young Boys, Inc., a notorious drug trafficking gang, renting entire floors of the hotel from which to run their operations. Breakings and enterings,

> assaults, armed robberies, and car thefts were frequent occurrences on the premises. A fire bombing once "took out" an entire floor of the hotel. Defendants and their agents and employees were aware of these occurrences.
>
> Plaintiff also presented a report by an expert who opined that, on the basis of the frequent occurrence of crime on the premises and the physical condition of the premises, such as a privacy fence around the parking lot, the premises was a "crime magnet," that is, a place where crimes were even more likely to occur than in the surrounding high-crime area. The physical condition of the premises conveyed a message that "anything goes" and that there would be no proprietary intervention. [*Id.* at 165.]

In contrast, plaintiff, in the present case, has come forward with little, if any, evidence to support her nuisance theory. Plaintiff points to the "sexual assault" of a pizza delivery girl, but a review of the record does not indicate that the event involved any physical or sexual attack. Although plaintiff alleges that other crimes occurred in the apartment complex, there is no evidence regarding the nature of those crimes and no evidence, beyond the self-serving allegations of plaintiff, that defendant was aware that crimes were occurring. In short, there is little beyond plaintiff's imagination that would establish that the partially-burned building area was a "crime magnet"[2] or that defendant recognized it to be so. The trial court did not err in finding that plaintiff failed to present sufficient evidence of nuisance to create a jury question on this issue.

Finally, plaintiff argues that the trial court improperly denied her motion to amend her witness list. We review this decision for an abuse of discretion. *Carmack v Macomb Co Community College*, 199 Mich App 544, 546; 502 NW2d 746 (1993). In light of the fact that plaintiff had previously failed to file a timely witness list and plaintiff's motion was brought after mediation and the close of discovery, without any showing of good cause for the delay, we do not conclude that there was any abuse of discretion.

We affirm.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra
/s/ Meyer Warshawsky

[1] Plaintiff's complaints regarding the fencing of the parking lot fly in the face of precedents clearly suggesting that, if anything, fencing of parking lots increases, rather than decreases, the safety of invitees. *Harkins, supra* at 896; *Stanley, supra* at 151.

[2] Further, even if there was evidence to show that defendant created or condoned an area prone to criminal activity, there is nothing to suggest that this would have been a proximate cause of plaintiff's injuries. Plaintiff was not the victim of a random criminal who was attracted to the apartment parking lot

because it was a "crime magnet." Instead, the record establishes that her assailant was an ex-boyfriend who had made plaintiff his target and would have assaulted her at some time and place regardless of any actions by defendant.