STATE OF MICHIGAN

COURT OF APPEALS

DEBRA STACY, Next Friend of CONNIE STACY, a Minor,

Plaintiff–Appellant,

v

LAKESIDE TRAILER COURT COMPANY,

Defendant–Appellee.

UNPUBLISHED
January 21, 1997

No. 177795
Wayne Circuit Court
LC No. 93-300750

Before: Taylor, P.J., and Markey and N.O. Holowka,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a no cause of action judgment following a jury verdict in this premises liability action. We affirm.

Plaintiff's first argument is that the trial court erred in admitting a newspaper article into evidence pursuant to MRE 803(21)[1] because the article contained hearsay statements from a resident of defendant's trailer park. We agree.

The newspaper article represented double hearsay because the article was inadmissible in and of itself, *Baker v General Motors Corp,* 420 Mich 463, 511; 363 NW2d 602 (1984), aff'd 478 US 621; 106 S Ct 3129; 92 L Ed 2d 504 (1986), and it purported to establish the truth of the matters asserted in the article, i.e., the journalist's recollection of the statements that a trailer park resident made regarding the safety and comfort she experienced while living at defendant's trailer park. MRE 801(c); see also *Eisbrenner v Stanley*, 106 Mich App 357, 369; 308 NW2d 209 (1981); *People v Hagle*, 67 Mich App 608, 614; 242 NW2d 27 (1976) ("the written sheet constitutes one level of hearsay; the statements contained in it allegedly made by [a juror] to [defense counsel's secretary that were contained in the affidavit] constitute another level of hearsay"). With double hearsay, each level of hearsay must be deemed admissible, which the trial court failed to require. Accord *Moncrief v*

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

Detroit, 398 Mich 181, 206-207; 247 NW2d 783 (1976) (Levin, J., dissenting); *People v Kort*, 162 Mich App 680, 691; 413 NW2d 83 (1987). Indeed, there is no hearsay exception for newspaper articles, even assuming that the interviewee's statement regarding her perceived safety at defendant's trailer park could be admissible under MRE 803(21). *Baker, supra*. Nevertheless, we do not believe that the error mandates reversal, as MRE 103(a) states the an error may not be predicated upon a ruling that admits or excludes evidence unless a substantial right of the party is affected. *Eisbrenner, supra* at 369. Here, the information contained in the newspaper account merely confirmed information and testimony that had already been properly admitted into evidence. *Baker, supra*. Thus, any error which occurred was harmless. MRE 103(a); MCR 2.613(A).

Plaintiff's next argument is that the trial court erroneously instructed the jury. We disagree. The trial court's instructions were the same ones upheld on appeal in *Holland v Liedel*, 197 Mich App 60, 65-66; 494 NW2d 772 (1992), and they neither diminished the impact of other alleged criminal activity at the trailer park nor overemphasized the importance of the park's location in a high crime area. Plaintiff argues that because defendant was in the position to prevent the rapist's actions by evicting him before the rape for his intoxicated and disturbing behavior, *Holland* does not state the applicable legal duty, and the jury instructions based on its holding were inappropriate. Instead, plaintiff asserts that the jury should have been instructed in accordance with this Court's decisions in *Wagner v Regency Inn Corp*, 186 Mich App 158; 463 NW2d 450 (1990), and *Mills v White Castle System, Inc*, 167 Mich App 202; 421 NW2d 631 (1988), where the defendants condoned prior criminal activity on their business premises.

Upon reviewing the jury instructions in their entirety, we believe that the theories of the parties and the applicable law were adequately and fairly presented to the jury and that no supplemental instruction was required on this point because the instructions given adequately covered the applicable law. *Bordeaux v The Celotex Corp*, 203 Mich App 158, 169; 511 NW2d 899 (1993); see also *Stanley v Town Square Cooperative*, 203 Mich App 143, 146-151; 512 NW2d 51 (1993). The jury instructions encompassed this Court's recognition in *Mills* that a business invitor's knowledge about "foreseeable criminal activity of third parties" on its premises can give rise to a duty to protect. *Mills, supra* at 208. Also, the standard jury instruction defining proximate cause was adequate. *Bordeaux, supra*. Accordingly, we find no abuse of discretion in the trial court's decision not to give plaintiff's requested instructions to the jury.

Plaintiff's next argument is that the trial court made three erroneous evidentiary rulings that require reversal of the jury's verdict. We disagree.

Plaintiff has failed to cite any case law or other authority to support her argument that the trial court erred in refusing to allow her attorney to question defendant's manager regarding the reasons why two residents of the trailer park were not evicted after they had engaged in physical disputes with other residents. Plaintiff has also failed to cite any authority to support her argument that the trial court erred in refusing to allow testimony to be presented at trial concerning a prior attempted abduction of plaintiff's daughter. We will not search for authority to sustain or reject a party's position. *Ramsey v MUSTFA Policy Board*, 210 Mich App 267, 271; 533 NW2d 4 (1995). Plaintiff has therefore

abandoned these issues on appeal. *Vugterveen Systems, Inc v Olde Millpond Corp*, 210 Mich App 34, 46-47; 533 NW2d 320 (1995), lv gtd 451 Mich 898 (1996).

Plaintiff also contends that the trial court abused its discretion in when it refused to allow a resident of defendant's trailer park to give his opinion regarding whether the park was a comfortable place in which to commit crime. This Court will find an abuse of discretion only when an unprejudiced person considers the facts that the trial court relied upon and determines that no justification or excuse existed for the ruling. *Cleary v The Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1994). We find no abuse of discretion here. The trial court refused to let the witness answer the question on the basis that the witness was not qualified to answer the question. We agree. A witness competent to answer such a question would be one with expert knowledge as such a determination is outside the common experience of lay witnesses. *Blake v Consolidated Railway*, 129 Mich App 535, 549; 342 NW2d 599 (1983); *Ruddock v Lodise*, 413 Mich 499, 504; 320 NW2d 663 (1982). The witness here was not qualified as an expert.

Plaintiff's last argument is that the trial court erred in denying her challenge to the jury array. We disagree. While "[t]he American tradition of trial by jury, considered in connection with either criminal or civil proceedings,[2] necessarily contemplates an impartial jury drawn from a cross-section of the community," *Thiel v Southern Pacific Co*, 328 US 217, 220; 66 S Ct 984; 90 L Ed 1181 (1946), plaintiff has submitted neither authority nor analysis to explain how the alleged underrepresentation of Detroit residents in jury venires compiled in Wayne County is due to the systematic exclusion of that group in the jury-selection process. See *id.*;[3] accord *Robson v Grand Trunk Western RR Co*, 5 Mich App 90, 97-98; 145 NW2d 846 (1966). Under these circumstances, plaintiff's argument must fail.[4]

Affirmed.

/s/ Clifford W. Taylor
/s/ Nick O. Holowka

[1] MRE 803(21) states:

> The following are not excluded by the hearsay rule even though the declarant is available as a witness:
>
> **(21) Reputation as to Character.** Reputation of a person's character among associates or in the community.

[2] Const 1963, art 1, §14 contains the civil jury trial constitutional guarantee in Michigan, and Const 1963, art 1, §20 contains the criminal jury trial guarantee.

[3] The United States Supreme Court in *Thiel* did not adopt the same test for establishing whether a jury contains a representative cross-section of the community as is used in criminal cases. See *Taylor v*

Louisiana, 419 US 522, 526-531; 95 S Ct 692; 42 L Ed 2d 690 (1975). Nevertheless, the Supreme Court observed:

> [An impartial jury drawn from a cross-section of the community] does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups [i.e., economic, social, religious, racial, political and geographical groups in the community]. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury. [*Thiel, supra*.]

[4] See also, generally, *Harville v State Plumbing and Heating, Inc*, 218 Mich App 302, 304-305, 319 n 8; 553 NW2d 377 (1996).