

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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

UNPUBLISHED

Plaintiff-Appellant,

v

No. 177795

LC No. 93-300750

LAKESIDE TRAILER COURT COMPANY,

Defendant-Appellee.

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

MARKEY, J. (concurring).

I concur with the majority's reasoning and result in this case except as to the analysis regarding the evidentiary ruling disallowing a resident of defendant's trailer park to give his opinion regarding whether the park was a comfortable place in which to commit a crime.

I agree with plaintiff that the trial court would have been within its discretion in allowing a resident of the park to give his opinion on this subject. See *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 454-456; 540 NW2d 696 (1995); *Haberkorn v Chrysler Corp*, 210 Mich App 354, 361; 533 NW2d 373 (1995). 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). The witness's testimony was based on his personal observations of defendant's trailer park during the three years that he resided there and was helpful to a clear understanding of the witness's testimony. Under these circumstances, lay witness testimony is certainly permitted. MRE 701; *Richardson, supra* at 455. "Any witness is qualified to testify as to his or her physical observations and opinions formed as a result of them." *Lamson v Martin (After Remand)*, 216 Mich App 452, 459; 549 NW2d 878 (1996). I believe the witness should have been allowed to testify. Moreover, the authority cited by the majority to support its conclusion is inapplicable as both *Blake, supra* and *Ruddock* involved issues relating to the trial court's failure to allow expert testimony on

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

safety issues. Nor do those cases hold that expert testimony is required. Here, of course, the issue involved the proffered testimony of a lay person.

Nevertheless, I cannot conclude that the trial court abused its discretion in refusing to allow the testimony to be presented to the jury. That is, I cannot say the ruling was completely without justification or excuse, *Cleary, supra* at 208; MRE 401; MRE 403, so the discussion is merely academic.

/s/ Jane E. Markey