STATE OF MICHIGAN

COURT OF APPEALS

MERRY TILLMAN,

Plaintiff-Appellant,

v

JUDITH LAYLE and SHARON PARKS,

Defendants-Appellees.

UNPUBLISHED
December 27, 2002

No. 237389
Wayne Circuit Court
LC No. 00-016284-NO

Before: Bandstra, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants. We affirm. This appeal is being heard without oral argument pursuant to MCR7.214(E).

We review de novo a trial court's decision to grant or deny summary disposition. *Harold Co v Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

In *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495; 418 NW2d 381 (1988), our Supreme Court "held, for reasons of public policy, that a landowner/occupier's duty to exercise reasonable care for the safety of its invitees does not extend to anticipating and providing protection against the criminal acts of third parties." See *Harkins v Northwest Activity Center, Inc*, 434 Mich 896; 453 NW2d 677 (1990). At issue in *Harkins* was whether the defendant could be liable for failing to fix a hole in a boundary fence and thus facilitating the entry of a criminal assailant. The Supreme Court reversed our Court's judgment and reinstated the trial court's grant of summary disposition to defendant reasoning that "[w]e 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. Plaintiff's present cause of action is precluded for reasons expressed in *Williams.*" *Id*.

Our Court has followed *Harkins* and reasoned that a landlord's duty to protect invitees "is limited and does not extend to providing security guards or to maintaining a boundary fence, because we do not require the possessor of land to anticipate and protect against the general

hazard of crime in the community." *Stanley v Town Square Cooperative*, 203 Mich App 143, 151; 512 NW2d 51 (1993). Similarly, our Supreme Court has reasoned that "[t]he central holding of *Williams* is that [business invitors] are ordinarily not responsible for the criminal acts of third persons. . . . Suit may not be maintained on the theory that the safety measures are less effective than they could or should have been." *Scott v Harper Recreation, Inc*, 444 Mich 441, 452; 506 NW2d 857 (1993).

In the present case, any hazard or unreasonable risk presented by the wing wall resulted not from the common, everyday use of the porch but instead, from the assault upon plaintiff by a third person. Defendants had no duty to anticipate that assault or protect against it by constructing the wing wall in some other fashion. The trial court properly granted summary disposition to defendants reasoning that "the natural and probable result of having a side wall that is only 12 inches high is not that someone is going to fall and become injured . . . . [This accident resulted from] the particular way in which this encounter occurred between the plaintiff and the person she had a fight with. The defendant is not required by the duty of ordinary care to anticipate this kind of encounter and guard against it."[1]

We affirm.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Richard Allen Griffin

[1] The trial court did not determine that the wing wall presented an "open and obvious danger." We need not address that theory, nor the others advanced by defendants in support of the trial court's order.