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No. 26-1192

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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KELLY L. STEPHENS, Clerk

DANNICA ALLING, Plaintiff-Appellant, v. TARGET CORPORATION, Defendant-Appellee.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN OPINION

Before: MOORE, THAPAR, and HERMANDORFER, Circuit Judges.

HERMANDORFER, Circuit Judge. Dannica Alling was changing in a fitting-room stall at Target when Christian Randall, a customer in the adjoining stall, angled his phone above the partition and illegally photographed her. Target immediately called the police when alerted to the incident. Randall's crime led to his arrest and conviction on Michigan state-law offenses.

Alling later sued Target for premises liability and other torts. She alleged that Target's fitting rooms afforded inadequate protection against foreseeable crimes of voyeurism like Randall's. The district court entered judgment on the pleadings for Target, concluding that Michigan does not impose liability on merchants for failing to anticipate or prevent third-party crimes against their customers. Applying principles of Michigan law governing tort liability and third-party criminal activity, we agree and affirm.

I

In August 2022, Dannica Alling visited a Target in Portage, Michigan. While inside the changing room, she noticed "what appeared to be a camera-like reflection emanating from the adjoining fitting room wall." Alling Br. 8. Alling "immediately reported the incident" to a Target employee. *Id.* And the Target employee promptly called the police.

When officers arrived, Randall admitted that he took pictures of Alling while she was changing and that he knew his actions were illegal. He also admitted that Alling was not his first victim that day. Randall said that during his initial trip to the fitting rooms, "he heard a cute voice from the stall next to him," "took a picture over the dividing wall," and then proceeded to take additional photos because it was "easy." Police Rep., R.10-1, PageID 101. Randall left the fitting room. But when he saw Alling enter the stall, he turned around, took the adjoining stall, and photographed her too. Randall was later convicted of two counts of capturing a disturbing image of an unclothed person under Mich. Comp. Laws § 750.539d.

Alling sued Target in Michigan state court asserting various tort claims. Target removed the case to federal court and sought judgment on the pleadings under Federal Rule of Civil Procedure 12(c). The district court granted Target's motion, reasoning that "Michigan law does not impose liability on merchants for failing to anticipate the criminal acts of others." Op., R.19, PageID 162. Alling timely appealed, and we have jurisdiction. *See* 28 U.S.C. § 1291.

II

"A motion for judgment on the pleadings" under Rule 12(c) "generally follows the same rules as a motion to dismiss the complaint under Rule 12(b)(6)." *Bates v. Green Farms Condo. Ass'n*, 958 F.3d 470, 480 (6th Cir. 2020). Under that standard, "all well-pleaded material allegations of the pleadings of the opposing party must be taken as true." *Brown v. Louisville-*

Jefferson County Metro Gov't, 135 F.4th 1022, 1030 (6th Cir. 2025) (citation omitted). But we need not accept "legal conclusions" or "unwarranted factual inferences." *Com. Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327, 336 (6th Cir. 2007). "A Rule 12(c) motion is granted when no material issue of fact exists and the party making the motion is entitled to judgment as a matter of law." *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 582 (6th Cir. 2007) (citation omitted). We review a district court's decision to enter judgment on the pleadings de novo. *Oakland Tactical Supply, LLC v. Howell Twp.*, 103 F.4th 1186, 1191 (6th Cir. 2024).

We are sitting in diversity, so we apply the choice-of-law rules of the state in which the district court sits. *See Miller v. State Farm Mut. Auto. Ins. Co.*, 87 F.3d 822, 824 (6th Cir. 1996). Here, all parties agree that Michigan law governs this dispute. We agree, so we apply Michigan tort law to Alling's suit. *In re Darvocet, Darvon, & Propoxyphene Prods. Liability Litig.*, 756 F.3d 917, 937 (6th Cir. 2014). "If the Michigan Supreme Court has spoken on an issue, we are generally bound by that decision." *Auburn Sales, Inc. v. Cypros Trading & Shipping, Inc*., 898 F.3d 710, 715 (6th Cir. 2018). "And where Michigan appellate courts have spoken in the Supreme Court's absence, we will normally treat those decisions . . . as authoritative absent a *strong showing* that the [Michigan Supreme Court] would decide the issue differently." *Id.* (brackets and omissions in original) (citation omitted).

III

We first address Alling's principal argument: that the district court erred in rejecting her premises-liability and negligence claims. Under Michigan law, "[a]ll negligence actions, including those based on premises liability, require a plaintiff to prove four essential elements: duty, breach, causation, and harm." *Kandil-Elsayed v. F & E Oil, Inc.*, 1 N.W.3d 44, 51 (Mich. 2023). This case centers on the duty element—in particular, Alling contends that Target breached

its legal duty as a merchant and premises operator. In Michigan, "the question whether the defendant owes an actionable legal duty to the plaintiff is one of law which the court decides." *Id.* at 52 (citation omitted).

Alling's theory is not that Target breached its duty by "fail[ing] to stop a single criminal act." Alling Br. 12-13. She instead contends—pressing a blend of premises liability and other negligence theories—that Target is liable because its "fitting room design itself created a foreseeable and ongoing risk of visual intrusion into spaces intended to be private." *Id.* at 12. Michigan law, however, sets out specific rules for holding parties like Target liable for criminal acts by third parties. Below, we provide an overview of the legal rules applicable to Alling's complaint. We then apply those rules to each of Alling's theories and conclude that Target did not violate any legal duty it has as a merchant or premises owner. That conclusion means that Alling's premises-liability and other negligence claims fail as a matter of law.

A

The Michigan Supreme Court has set down a clear framework for assessing tort claims arising from the criminal acts of third parties. The lead case is *MacDonald v. PKT, Inc.*, 628 N.W.2d 33 (Mich. 2001), which involved claimants who suffered injuries from sod thrown at a concert venue. *MacDonald* explained that, in Michigan, a merchant or premises owner "'is not an insurer of the safety of its invitees.'" *Id.* at 40 (quoting *Williams v. Cunningham Drug Stores, Inc.*, 418 N.W.2d 381, 384 (Mich. 1988)). Merchants therefore owe only a narrow duty "to use reasonable care to protect their identifiable invitees from the foreseeable criminal acts of third parties." *Id.* (citation omitted). That duty triggers "only when the merchant has notice that a third party's criminal acts pose a risk of imminent and foreseeable harm to an identifiable invitee." *Bailey v. Schaaf*, 835 N.W.2d 413, 416 (Mich. 2013). As interpreted by the Michigan Supreme

Court, that third-party-crime rule requires the merchant's knowledge of both (i) a specific, presently occurring criminal situation[1] and (ii) a specific, identifiable potential victim. *Id.* at 424-25; *see also Chen v. Hillsdale College*, 150 F.4th 735, 741-42 (6th Cir. 2025). And to fulfill its duty in those situations, "a merchant is not obligated to do anything more than reasonably expedite the involvement of the police." *MacDonald*, 628 N.W.2d at 41.

The Michigan Supreme Court's third-party-crime rule reflects its weighing of "public policy" considerations surrounding the nature of crime, the comparative roles of government and private merchants in ensuring the safety of communities, and the importance of encouraging commerce. *Id.* at 39. Because "a crime may be committed anywhere and at any time," *Williams*, 418 N.W.2d at 384, it would be "unjustifiable to make merchants" "effectively vicariously liable for the criminal acts of third parties," *MacDonald*, 628 N.W.2d at 39. And the public has vested the government, not the private sector, with the duty of police protection. *Williams*, 418 N.W.2d at 384-85. "[T]ransferring the responsibility to a business owner" would encourage "members of the public [to] resort to self-help," which "contravenes public policy." *Id.* at 385. Such a shift, the Michigan Supreme Court has reasoned, also would "increase the pressure on commercial enterprises to remove themselves from our troubled urban and high-crime communities" by "unfairly expos[ing]" those enterprises "to excessive tort liability." *MacDonald*, 628 N.W.2d at 42.

Michigan courts have had several occasions to clarify the bounds and application of the third-party-crime rule to merchants and other premises operators. In doing so, they have articulated three principles that are relevant to our assessment of Alling's complaint.

[1] Alling does not allege that Target was aware of Randall's prior acts of voyeurism on the day in question, and so does not claim that Target failed to address a known, presently occurring situation of criminal activity.

First, *MacDonald* itself explains that a crime's foreseeability does not create a duty to prevent third-party criminal acts. Rather, under Michigan law, a premises occupier has no duty to "anticipate *any* type of criminal activity, whether 'random' or otherwise, *before* there is some specific activity on the premises creating a foreseeable risk of imminent harm to an identifiable invitee." 628 N.W.2d at 43. And "[i]t is only a present situation on the premises, not any past incidents, that creates a duty to respond." *Id.* at 39. Applying that rule, the *MacDonald* Court concluded that prior sod-throwing incidents at the concert venue did not alter its no-liability conclusion. *Id.* at 41. So even where "there have been prior incidents" of the same criminal acts at the same "business premises," merchants have no duty to "anticipate" or "prevent" the recurrence of those crimes. *Graves v. Warner Bros.*, 656 N.W.2d 195, 202 (Mich. Ct. App. 2002).

Second, a merchant's choice to "voluntarily take[] safety precautions in an effort to prevent criminal activity" does not negate the default rule against liability for third-party crime. *MacDonald*, 628 N.W.2d at 40. A merchant who opts to provide and advertise safety measures—like the presence of security—does not thereby undertake a responsibility to provide perfect safety. *See, e.g.*, *Scott v. Harper Recreation, Inc.*, 506 N.W.2d 857, 858, 863 (Mich. 1993) (no liability for third-party crime based on merchant's advertising "Free Ample Lighted Security Parking"). So a victim of third-party crime cannot overcome the default liability rule and pursue a merchant "'on the theory that the safety measures are less effective than they could or should have been.'" *MacDonald*, 628 N.W.2d at 40 (quoting *Scott*, 506 N.W.2d at 863). Otherwise, "merchants who provide some measure of protection" would be "penalize[d]" with greater liability than those "merchants who take no such measures." *Scott*, 506 N.W.2d at 862 (citation omitted).

Third, Michigan courts have applied the third-party-crime rule even when the criminal took advantage of some defect on the property. *Harkins v. Nw. Activity Ctr., Inc.*, 453 N.W.2d 677

(Mich. 1990) (order), is illustrative. There, an assailant shot Harkins, a business invitee, after the assailant gained access to a community center through "a hole in the boundary fence." *Id.* at 677. Harkins sued the community center on the theory that it "failed to maintain its premises and allowed the boundary fence to deteriorate, that the assailant gained entry through the defective fence[,] and that the incident here was foreseeable because of prior similar incidents." *Id.* at 678 (Levin, J., dissenting) (citation omitted).

The Michigan Supreme Court disagreed and summarily reversed the lower court's contrary ruling. It first reiterated the state's default rule: "[F]or reasons of public policy," a premises owner's duty to invitees "does not extend to anticipating and providing protection against the criminal acts of third parties." *Id.* at 677 (citing *Williams*, 418 N.W.2d at 385). The problem with Harkins's argument, the court explained, was that she failed to "identif[y] 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." *Id.* And the court found "no distinction between requiring" the community center "to anticipate this hazard and requiring" it "to anticipate and protect against the general hazard of crime in the community." *Id.* So Harkins could not circumvent the general rule against imposing liability for third-party criminal acts by pleading a dangerous-condition theory. Later decisions have applied this reasoning to similar premises-liability arguments. *See, e.g.*, *Tillman v. Layle*, No. 237389, 2002 WL 31958189, at *1 (Mich. Ct. App. Dec. 27, 2002).

B

Applying those Michigan-law principles to Alling's premises-liability and negligence claims, we conclude that the district court properly granted Target's Rule 12(c) motion. No matter how Alling styles her theories, she fails to establish that Michigan imposes any applicable duty on Target.

Premises Liability. We begin with Alling's premises-liability theory. According to Alling, *MacDonald*'s third-party-crime rule does not override Target's duties as a "possessor[] of land." Reply Br. 7. Among those duties, Alling asserts, is that Target must "exercise reasonable care to protect invitees from unreasonable risks of harm caused by dangerous conditions on the land." *Id.* (citing *Kandil-Elsayed*, 1 N.W.3d at 71). From there, Alling analogizes the design of the fitting-room stalls to a dangerous condition. And she says that because Target "created the condition at issue" by maintaining the problematic fitting rooms, "any duty arises" from Target's "conduct itself—not from the presence of a third-party actor." Alling Br. 14-15.

At the outset, we question how Alling's framing fits with dangerous-condition liability. After all, unlike the typical case, the allegedly defective stalls here did not inherently present any physical danger or cause Alling's injury (unlike, say, a raised sidewalk crack, *see Buhl v. City of Oak Park*, 968 N.W.2d 348, 351 (Mich. 2021), or hidden, uncleared ice, *see Kandil-Elsayed*, 1 N.W.3d at 48). But even putting that aside, Alling's dangerous-condition theory fails against *Harkins* and later cases applying it. Recall that in *Harkins*, a person sought to hold a premises owner liable for a third-party assault. The theory was that (i) the property owner failed to properly maintain a "boundary fence," (ii) the hole in the fence in turn "facilitated the assailant's entry" and attack, and (iii) did so in a way reasonably foreseeable given prior, similar incidents. *Harkins*, 453 N.W.2d at 677; *id.* at 678 (Levin, J., dissenting). The Michigan Supreme Court declined to permit liability and instead applied the general third-party-crime rule. *Id.* at 677.

Here, Alling seeks to press the same logic chain that *Harkins* rejected: She asserts that (i) Target failed "to maintain its premises in a reasonably safe and private condition" by operating insufficiently protective fitting rooms, (ii) the fitting-room problem in turn permitted Randall to commit criminal voyeurism that (iii) was foreseeable given "prior substantially similar incidents."

Alling Br. 8, 10. As in *Harkins*, Alling's attempt to plead a dangerous-condition theory thus collapses into the impermissible argument that Target was required "to anticipate and protect against the general hazard of" criminal voyeurism. *Harkins*, 453 N.W.2d at 677. It therefore fails to create an actionable duty on Target's part.[2]

Nor can Alling change this conclusion by asserting that Target "selected and maintained fitting room stalls with known, visible design" issues and failed to implement "alternative[] or remedial measures." Alling Br. 13-14. Revisiting *MacDonald* helps show why. The sod-throwing that caused the injury in *MacDonald* had been a repeat problem at the facility, which featured a "grass-covered hill." *MacDonald*, 628 N.W.2d at 34-35. Even so, the *MacDonald* Court held that the facility had no general duty to protect invitees from patrons' criminal actions of throwing sod. *Id.* at 35.

One plaintiff, however, had "moved to amend her complaint to add" theories beyond premises liability. *Id.* That included an effort to add a claim for "negligent design" of the facility based on its "failure to take adequate measures to prevent sod throwing." Brief for Plaintiff-Appellee at 25, 30, *MacDonald v. PKT, Inc.*, 628 N.W.2d 33 (Mich. 2001) (No. 114039), 2000 WL 34416653. Yet the Michigan Supreme Court, after reciting and applying the third-party-crime rule, "conclude[d] that plaintiff's amendment" to add a "design defect" claim "would have been futile." *MacDonald*, 628 N.W.2d at 41. Thus, to the extent Alling seeks to avoid the third-party-crime rule by focusing on Target's selection of the fitting-room design, rather than its maintenance of a dangerous land condition, *MacDonald* appears to foreclose that pathway. *See also Tillman*,

[2] The *Harkins* Court's statement that "the assailant could have entered by other means" than the hole in the fence does not alter this conclusion. 453 N.W.2d at 677. According to Alling, voyeurs likewise have gained improper access "by other means" than the allegedly defective stall design, *see id.*, such as by placing hidden cameras inside fitting rooms.

2002 WL 31958189, at *1 (no duty to "protect against" assault that caused person to fall over porch wall "by constructing the wing wall in some other fashion").

Ordinary Negligence. Alling's ordinary-negligence claims against Target fare no better. As our court has explained, a tort claimant may not "pursu[e] an ordinary negligence theory . . . to circumvent Michigan's well-established premises-liability rule that a business is seldom required to protect customers from unforeseeable criminal or negligent acts of third parties." *Saunders v. Home Depot, Inc.*, No. 24-1933, 2025 WL 1591875, at *3 (6th Cir. June 5, 2025); *see also Kachudas v. Invaders Self Auto Wash, Inc.*, 781 N.W.2d 806, 806 (Mich. 2010) (order) (noting that "[a]lthough an injured person may pursue a claim in ordinary negligence for the overt acts of a premises owner on his or her premises, the plaintiff in this case is alleging injury by a condition of the land, and as such, his claim sounds exclusively in premises liability." (citation omitted)). Alling's claims warrant no different result.

Alling responds that Target "breached its independent duty of reasonable care" by failing to ensure that its stalls "provide[d] adequate visual privacy." Alling Br. 26. But a Michigan merchant, as explained, "is not an insurer of the safety of his invitees," and so faces no liability for imperfect safety (or here, privacy) measures. *Scott*, 506 N.W.2d at 861 (citation omitted). Alling thus cannot maintain her negligence claim "on the theory that the safety measures are less effective than they could or should have been." *Id.* at 863. Otherwise, as the Michigan Supreme Court has explained, "a merchant would be effectively obliged *not* to take such measures." *Id.* at 862. So Alling's ordinary-negligence theory based on Target's offering privacy stalls gains her no ground.

Negligent Supervision and Training. Alling's complaint also alleges that Target "failed to train and supervise employees responsible for fitting room safety." Compl., R.1-1, PageID 16. That claim fails for substantially the same reasons we have discussed. Target had no duty to

anticipate a third-party criminal act. *Supra* pp. 8-10. Thus, even if Target voluntarily undertook measures to train its employees to prevent crime, Target is not liable for "safety measures" that aren't as effective as "they could or should have been." *Scott*, 506 N.W.2d at 863.[3] The only actionable duty that Michigan law placed on Target employees was to call the police once third-party crime was afoot. *MacDonald*, 628 N.W.2d at 41. Alling, though, does not dispute that Target employees did so.

New Duty Under Public Policy. Last, Alling urges us to find that the Michigan Supreme Court would "recogniz[e]" a duty that applies to Target "in the fitting room context" for public-policy reasons. Alling Br. 27, 28. According to Alling, such policy arguments include the particularly sensitive interests in bodily privacy and the relative ease with which Target could alter its fitting-room design. But our precedent counsels "extreme[] cautio[n] about adopting substantive innovation in state law." *Combs v. Int'l Ins. Co.*, 354 F.3d 568, 577-78 (6th Cir. 2004) (citation omitted). "[A]nd 'when given a choice between an interpretation of state law which reasonably restricts liability, and one which greatly expands liability,'" we generally are to "choose the narrower and more reasonable path." *In re Darvocet*, 756 F.3d at 937 (brackets omitted) (quoting *Combs*, 354 F.3d at 577).

We decline to stray from those directives, particularly because the Michigan Supreme Court has already grounded its third-party-crime rule in countervailing policy concerns. As noted, Michigan courts have for decades weighed the nature of crime, the importance of commerce, the government's vested role of providing police protection, and the benefit of merchants' voluntary,

[3] Further supporting this conclusion, our court has noted that "the Michigan Court of Appeals *rejected* the imposition of a duty" on a merchant for crimes committed by *its own* employees. *Chen v. Hillsdale College*, 150 F.4th 735, 743 (6th Cir. 2025) (citing *O'Neal v. MCC Mecosta, LLC*, No. 356766, 2023 WL 461844, at *5 (Mich. Ct. App. Jan. 26, 2023)); *see also Brown v. Brown*, 739 N.W.2d 313, 317-18 (Mich. 2007). We are hesitant to conclude that Michigan would nonetheless impose liability on Target for its employees' failing to stop a *third-party* criminal act.

if imperfect, safety efforts. *Supra* pp. 5-6; *MacDonald*, 628 N.W.2d at 39-40, 43-44; *see also Scott*, 506 N.W.2d at 862. The result: A continued refusal to "shift the duty of police protection from the government to the private sector" based on the "inability of government and law enforcement officials to prevent" all criminal acts. *Williams*, 418 N.W.2d at 385. And the Michigan Supreme Court has applied its third-party-crime rule in contexts ranging from the landlord-tenant relationship, *Schaaf*, 835 N.W.2d at 424, to an employer's liability for an employee's criminal acts, *Brown*, 739 N.W.2d at 317-19. Given the Michigan Supreme Court's consistent refusal to expand tort liability arising from third-party criminal activity, we see no indication in relevant caselaw that the court would abandon its longstanding position and impose a new, fitting-room-specific duty on Target here.

IV

Alling's complaint also pleaded intentional infliction of emotional distress (IIED), negligent infliction of emotional distress (NIED), invasion of privacy, and a claim under the Michigan Consumer Protection Act. The district court granted Target's Rule 12(c) motion as to these remaining claims.

Alling's opening brief does not provide legal support for her challenge to the district court's disposition of these claims. But an appellant's brief "must contain . . . citations to the authorities . . . on which the appellant relies," Fed. R. App. P. 28(a)(8)(A), as well as provide more than a "perfunctory" treatment of any appellate issues, *Bivens v. Zep., Inc.*, 147 F.4th 635, 649 (6th Cir. 2025) (citation omitted). So Alling likely forfeited any defense of these remaining claims by failing to include argument about those claims in her opening brief.

Even were we to consider Alling's reply-brief arguments, she principally contends that her IIED and NIED claims should survive "[b]ecause the Complaint adequately pleads underlying

negligence-based claims." Reply Br. 5. Alling thus appears to acknowledge that those state-law claims are derivative of pleading a viable negligence claim against Target. Because Alling has not done so, her derivative claims likewise fail. And while the district court dismissed Alling's consumer-protection claim for distinct reasons related to that statutory scheme, Alling nowhere addresses the dismissal of her consumer-protection claim. That claim is therefore abandoned.

Nor did the district court err in granting Target's Rule 12(c) motion with respect to Alling's invasion-of-privacy claim. Alling's reply brief points out that Michigan recognizes invasion of privacy as an independent tort. And she seeks to plead theories of both intrusion upon seclusion and public disclosure of private facts. But as to the former, Alling does not contend that Target, as opposed to Randall, intruded upon her seclusion by "obtaining" "information about" her "through some method objectionable to a reasonable man." *Lewis v. LeGrow*, 670 N.W.2d 675, 687 (Mich. Ct. App. 2003). And as to the latter, which is an intentional tort, she makes "no allegation that Target disseminated private information itself." Alling Resp., R.17, PageID 137; *see Doe v. Henry Ford Health Sys.*, 865 N.W.2d 915, 920 (Mich. Ct. App. 2014). So the district court correctly concluded that Alling's invasion-of-privacy theory was in effect an "attempt[] to impose liability on Target for failing to anticipate a patron's criminal acts." Op., R.19, PageID 167. Michigan law does not permit that course.

* * *

For the reasons provided above, the district court did not err in granting judgment on the pleadings. We affirm.