SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2486-22

CARLOS FAIBISCH,

Plaintiff-Appellant/
Cross-Respondent,

v.

WAWA,

Defendant-Respondent/
Cross-Appellant,

and

RIGGINS GAS STATION, RIGGINS, INC., STATE OF NEW JERSEY, DEPARTMENT OF TRANSPORTATION, COUNTY OF GLOUCESTER, TOWNSHIP OF FRANKLIN, FRANKLIN TOWNSHIP POLICE DEPARTMENT, and ARYAN GAS CORP.,

Defendants-Respondents.

———————————————

Argued May 21, 2024 – Decided June 13, 2024

Before Judges Natali and Haas.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-0748-21.

Alan Keith Berliner argued the cause for appellant/cross-respondent (Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, attorneys; Alan Keith Berliner, of counsel and on the briefs; Annabelle M. Steinhacker, on the briefs).

William Jeffrey Kohler argued the cause for respondent/cross-appellant (Cooper Levenson, PA, attorneys; William Jeffrey Kohler, Jennifer Broeck Barr, and Samantha Taylor Edgell, on the briefs).

PER CURIAM

In this premises liability action, plaintiff Carlos Faibisch suffered serious injuries, resulting in the amputation of his leg, when he was struck by a car while crossing the street after visiting defendant Wawa. He challenges a March 3, 2023 Law Division order granting summary judgment and dismissing his claims against Wawa. Plaintiff specifically contends the court erred in concluding Wawa did not owe him a duty of care. Wawa also cross-appeals in the alternative, arguing the court erred in its analysis of the Hopkins v. Fox & Lazo Realtors, 132 N.J. 426 (1993) factors by determining plaintiff was a business invitee at the time he was injured. Because we are satisfied the court correctly determined Wawa did not owe plaintiff a duty as he was not on its property or

taking an expected route to parking provided by Wawa at the time he was injured, we affirm. As a result of our decision, we do not address Wawa's cross-appeal.

I.

We begin by reviewing the facts in the summary judgment record, taken in the light most favorable to plaintiff as the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Plaintiff was a truck driver for twenty-five years, who frequently traveled between New Jersey and Texas and often stopped at the Wawa store at 450 Delsea Drive in Franklin Township. On August 22, 2020 at approximately 10:00 p.m., plaintiff parked his truck on the shoulder of Delsea Drive across the road from Wawa. Delsea Drive is a two-lane highway, separated by a center turning lane, with shoulders on both sides, including directly abutting Wawa's property, and a speed limit of forty miles per hour.

According to plaintiff's deposition testimony, his tractor trailer could not fit in the Wawa parking lot, and he therefore always parked on the shoulder of Delsea Drive. He admitted at his deposition no one from Wawa told him to park there, but noted "a lot of people park" on the shoulder and he had parked in the same area "five or six times" previously. Photos of the area where plaintiff

parked reflect a sign which reads "no stopping or standing" and an arrow pointing to both the left and right of the sign.

Franklin Township Police Officer Joshua Fennimore testified at his deposition that he "sometimes" observed "tractor trailers or box trucks parked along th[e] shoulder" near the Wawa on both sides of the road. Wawa employee Kyle Bekeshka testified there were no designated places for tractor trailers to park in Wawa's lot, and he observed "semi-tractor trailers or box trucks parked in the shoulder on either side of Delsea Drive by Wawa . . . all the time."

Ryan Raively, another Wawa employee, agreed "[m]ost of the time [he] would see tractor trailers parked on the shoulder," not "every day, but most days." Raively did not recall "anybody from Wawa ever tell[ing] any of the truck drivers to move their vehicles out of the shoulder area." On the evening of the accident, however, he stated about "five to ten percent" of the parking lot was occupied by cars or trucks.

Plaintiff went into Wawa intending to buy a coffee, but left without purchasing anything because the lines to check out were "very long" and he had left his truck running. After leaving, plaintiff crossed Delsea Drive, not through the designated crosswalk about a half-block away, but in the middle of the street.

A car driven by Michael Bower struck plaintiff and subsequently fled the scene.[1] According to the police report, upon their arrival, police observed plaintiff with severe injuries "lying in the north bound shoulder of the roadway approximately [eighty-five] feet from the Wawa parking lot entrance." Plaintiff sustained serious personal injuries in the accident, he was in a coma for two months, and his right leg was amputated.

Plaintiff sued Wawa and a number of other defendants, after settling with Bower.[2] Wawa denied liability and asserted several defenses, as well as crossclaims against the other defendants for contribution and indemnification, and third-party claims for contribution and indemnification against Bower.

Wawa moved for summary judgment and in opposing its application, among other proofs, plaintiff submitted the report of his expert, Stephen

---

[1] Bower was apprehended by police a short time later after being involved in a single-car crash. Police suspected Bower was intoxicated and located alcohol in the car, but the results of any chemical testing were not included in the record before us. According to the police report, Bower refused to complete field sobriety tests.

[2] Plaintiff also brought claims against Gloucester County, the State, and Department of Transportation, which were dismissed in an August 27, 2021 order, and Riggins Inc., Riggins Gas Station, and Aryan Gas Corp., all of whom were granted summary judgment in a December 16, 2022 order. Plaintiff later dismissed his claims against the last remaining defendants, the Township of Franklin and its Police Department. Plaintiff does not challenge any of these orders. This appeal therefore involves only plaintiff's claims against Wawa.

Motyczka, a retired lieutenant of the New Jersey State Police, accident reconstructionist, and investigator. Lt. Motyczka noted "a tractor-trailer driver or other large vehicle driver attempting to leave Wawa's parking is blocked from exiting onto Delsea Drive" because of the "close-quarters situation at the rear corner of the store." He opined Wawa "failed to provide appropriate standard of care to passing drivers and pedestrians" by its "failure to maintain traffic movement order and efficient traffic flow on [its] propert[y]." Specifically, he highlighted the frequency with which Wawa's parking lot was full, its lack of "corrective measures" to prevent large vehicles from parking in its lot, and its failure to make "parking lot changes or improvements to accommodate" large vehicles or to improve traffic flow efficiency.

Lt. Motyczka concluded tractor-trailer parking on the shoulder of Delsea Drive "resulted from the cascading effects of the unaddressed overflow of improper tractor-trailer, box truck, and other large vehicle parking in Wawa and Riggins' parking lots," and it was "Wawa['s] and Riggins' failure to maintain order and clear paths of travel through their parking lots" that caused plaintiff's injuries. He also suggested Wawa should have "hire[d] and ha[d] on-site, at appropriate times, an off-duty police officer or a trained civilian traffic agent to maintain traffic order."

Plaintiff additionally relied upon the report of another expert, Donald Strenk, a consultant for retail gasoline and convenience store businesses. Strenk opined Wawa's parking lot "was designed with inadequate turning lanes and parking spaces available for tractor trailer . . . rigs." Generally, he noted gas stations and convenience stores "become[] congested, uninviting for customers and unsafe for vehicles and pedestrians if trucks are allowed access" without "safe turning radii available."

Strenk explained even though there was adequate space for two trucks to park in Wawa's lot, "turning space available for such rigs to enter, circumvent the property, and exit is insufficient for safe maneuvering." This created, in his opinion, "significant safety issues on site that are recurring, and that W[awa] should be aware of and has not addressed." He concluded Wawa "failed to execute industry standards of care" as to its tractor-trailer customers because it "was aware of and tacitly approved of [tractor-trailer] rig customers parking across Delsea Drive, a busy two[-]lane highway, to access the W[awa] convenience store," establishing an obligation to ensure "their patrons are not subjected to an unreasonable risk of harm in traversing the expected route across Delsea Drive to the store."

After considering the parties' submissions and oral arguments, the court granted Wawa's motion for summary judgment and dismissed plaintiff's claims. In its March 3, 2023 written opinion explaining its decision, the court first determined whether Wawa owed plaintiff a duty and conducted an analysis of the factors set forth in Hopkins, 132 N.J. at 439. As to the first factor, the parties' relationship, it concluded "it was undisputed that [plaintiff] was a business invitee to Wawa" as he went to its store "with an intention of buying a snack." The court found, relying upon Mulraney v. Auletto's Catering, 293 N.J. Super. 315, 319 (App. Div. 1996), "this factor weighs in favor of a finding Wawa owed [plaintiff] a duty as he is a business invitee who is owed a heightened duty of care, even if crossing the highway back to his vehicle."

With respect to the second Hopkins factor, "the nature of the attendant risk," the court noted under Underhill v. Borough of Caldwell, 463 N.J. Super. 548, 560 (App. Div. 2020), its consideration included "whether the risk is foreseeable, whether it can be readily defined, and whether it is fair to place the burden o[f] preventing the harm upon the defendant." Although concluding "it is reasonably foreseeable that patrons of Wa[w]a could get injured when crossing the State highway to enter their business," the court found it would not be fair to "place the responsibility of regulating traffic to cross the highway" on

Wawa, particularly "when they do not own or control the highway." It also did not think it fair to require Wawa to "employ an off-duty police officer to regulate and control pedestrian and vehicular traffic." Accordingly, the court found the second factor weighed in favor of no duty owed.

The court also determined the third Hopkins factor, "the opportunity and ability to exercise care," weighed in favor of no duty owed. It reasoned "there may be an ability to exercise care through forms of regulating safe passage for patrons across the highway" but "weighing significantly against this is the fact that the owner of the highway set a crosswalk in the highway for safer passage of pedestrians," and Wawa's inability to "modify the highway or construct a different crosswalk" due to it not owning that property. It found the crosswalk "provided safe passage" to plaintiff, as contemplated in Mulraney.

Finally, as to the fourth Hopkins factor, "the public interest in the proposed solution," the court found "there is a public interest in providing safe passage across a highway for individuals" but the crosswalk at the intersection already provided that safe passage. It also reasoned "it is against the public interest to find a duty should be owed by a landowner for accidents that do not occur on their premises," again weighing in favor of no duty owed.

The court concluded, therefore, Wawa did not owe plaintiff a duty. It also considered analogous cases, including MacGrath v. Levin Properties, 256 N.J. Super. 247 (App. Div. 1992) and Buddy v. Knapp, 469 N.J. Super. 168 (App. Div. 2021), each of which found no duty owed to plaintiffs injured by vehicles in accidents occurring off of defendants' premises. The court found the benefit Wawa may derive from "those who park on Delsea Drive to shop at the business" did not create a corresponding duty to "protect those who traverse Delsea Drive to enter the business." This appeal and cross-appeal followed.

II.

Before us, plaintiff argues the court erred in granting Wawa summary judgment, as he maintains Wawa owed a duty to provide him safe passage to its store. In support, he contends Wawa "attracted and embraced business from drivers of tractor trailer rigs" despite its parking lot being unable to accommodate such trucks, which "forced tractor trailer rigs desiring the use of the store onto the shoulder of the adjoining highway," a fact plaintiff asserts was "well-known to defendant." Relying upon Butler v. Acme Markets, Inc., 89 N.J. 270, 275 (1982), he notes a "proprietor owes its business invitee a duty to provide a reasonably safe place to do that which is within the scope of the invitation" even "beyond the bounds of its own physical property." He also

points to Brierly v. Rode, 396 N.J. Super. 52, 53 (App. Div. 2007), noting we held in that case "[a] business proprietor has a duty, at least under some circumstances, to undertake reasonable safeguards to protect its customers from the dangers posed by crossing an adjoining highway to an area the proprietor knows or should know its customers will use for parking."

Applying the factors to determine whether a duty exists as set forth in Hopkins, plaintiff contends "there is no question that a duty attached." Specifically, he argues (1) Wawa "invited [him] to its premises to further its commercial interests," (2) it was "reasonably foreseeable that a pedestrian crossing a highway at night faces a substantial risk of being struck by a passing motorist" and Wawa knew its customers regularly crossed the highway yet took no action, (3) Wawa had "the means to warn or lessen the risks to pedestrians and passing motorists by illuminating the highway, providing signs of warning, providing flashing lights, or if necessary, hiring an off-duty police officer or trained traffic control civilian," and (4) providing additional safety measures would be in the public interest.

Plaintiff relies upon Warrington v. Bird, 204 N.J. Super. 611, 617 (App. Div. 1985), in which we held "the critical element should not be the question of the proprietor's control over the area to be traversed but rather the expectation

of the invitee that safe passage will be afforded from the parking facility to the establishment to which they are invited." He maintains this is particularly true where the proprietor "had reasonable methods that they should have or could have employed that might have alerted motorists and patrons of the danger."

Plaintiff also relies upon Mulraney, noting the "determining factors" in that case were "whether it was foreseeable that a patron of [defendant] would park on the side of the adjoining county road and cross it to reach [defendant's] facility," and "whether there were means by which [defendant] could have made the expected path less dangerous." He contends, as here, the plaintiff in Mulraney could not park in defendant's parking lot, parked instead "on the opposite side of the highway," and was struck returning to her car after patronizing defendant's business. Plaintiff argues MacGrath and Buddy are distinguishable because neither case involved any allegation that it was the defendant's conduct that created the foreseeable harm to plaintiff, while here he asserts Wawa's failure to provide adequate space in its parking lot created the risk he faced.

In sum, plaintiff concludes Wawa owed him a "duty to provide reasonably safe passage along an expected route," even where it did not provide off-site parking. He rejects Wawa's position that the location where the injury occurred

and whether the defendant provided off-site parking should be dispositive, arguing "[o]ur Courts have explicitly found that both of these factual considerations are not determinative for imposition of a duty." Instead, he maintains Wawa's creation of a dangerous condition, its parking lot that could not accommodate tractor trailers, led to its duty to correct or warn of that condition.

In requesting we affirm, Wawa contends it owed no duty to plaintiff for an accident occurring on a public roadway, where it provided no off-site customer parking. Relying upon Estate of Desir ex rel. Estiverne v. Virtus, 214 N.J. 303 (2013), it argues "a landowner is not liable for offsite injuries on land not owned by the landowner." It maintains the court properly relied upon Buddy and MacGrath, and contrary to plaintiff's characterization, neither Warrington nor Mulraney are factually similar. Wawa stresses it did not direct plaintiff to illegally park in a no parking area or to jaywalk across the road, nor did it own the area where plaintiff parked or the accident occurred. It asks us to reject plaintiff's argument that the parking lot size constituted a dangerous condition, maintaining plaintiff was not "entitled to a parking space" and Wawa was regardless "entitled to reasonably expect the patrons will utilize existing traffic-

controlled crosswalks" when parking off-site, under Chimiente v. Adam Corp., 221 N.J. Super. 580, 585 (App. Div. 1987).

In its cross-appeal, Wawa argues the court incorrectly analyzed the Hopkins factors. Specifically, it asserts plaintiff was no longer a business invitee at the point he exited its premises and stepped off the curb onto the road.

We briefly address the standard governing our review. "We review decisions granting summary judgment de novo," C.V. v. Waterford Twp. Bd. of Educ., 255 N.J. 289, 305 (2023), applying the same standard as the trial court, Townsend v. Pierre, 221 N.J. 36, 59 (2015). Like the motion judge, we "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." C.V., 255 N.J. at 305 (quoting Samolyk v. Berthe, 251 N.J. 73, 78 (2022)). "Summary judgment is appropriate if 'there is no genuine issue as to any material fact' and the moving party is entitled to judgment 'as a matter of law.'" Ibid. (quoting R. 4:46-2(c)).

Turning to the applicable substantive principles, we first note, as our Supreme Court explained, "[w]hether a duty exists is ultimately a question of fairness." Hopkins, 132 N.J. at 439 (alteration in original) (quoting Weinberg

v. Dinger, 106 N.J. 469, 485 (1987)). To determine whether a duty is owed, we must examine "whether the imposition of such a duty satisfies an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy." Ibid. Specifically, several factors must be weighed and balanced: "the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution." Ibid. "The analysis is both very fact-specific and principled; it must lead to solutions that properly and fairly resolve the specific case and generate intelligible and sensible rules to govern future conduct." Ibid.

Generally, "the common-law rule in New Jersey is that a property owner, who is otherwise without fault, owes no duty to pedestrians who are injured on an abutting highway or sidewalk which is part of the public domain." MacGrath, 256 N.J. Super. at 250-51; see also Desir, 214 N.J. at 317 (holding "a landowner is 'not liable for off-premises injuries merely because those injuries are foreseeable'" (quoting Kuzmicz v. Ivy Hill Park Apts., 147 N.J. 510, 518 (1997))). In certain circumstances, however, a property owner's duty may extend beyond their property's boundaries.

As we explained in Buddy, "a premises owner owes a duty of care to one injured off premises if the source of the injury is a dangerous condition on the

premises and if the injury is the result of a foreseeable risk to an identifiable person." 469 N.J. Super. at 190 (quoting Desir, 214 N.J. at 318). Where the property owner "neither created the risk of harm nor exercised control over the location where the harm occurred," no duty will be imposed. Desir, 214 N.J. at 317-18. As relevant here, when the plaintiff is injured while traveling to or from defendant's property, "[c]ritical to the imposition of liability is a direct economic benefit to the commercial landowner from the path taken by the injured party and the absence of an alternative route." Buddy, 469 N.J. Super. at 191 (alteration in original) (quoting Kuzmicz, 147 N.J. at 519).

Our courts have considered on several occasions situations in which a plaintiff injured while traveling to or from a defendant's business has sought to impose a duty upon the defendant. For example, in Mulraney, the plaintiff parked across a highway from defendant's business after being informed one of defendant's lots was reserved for valet parking and discovering the second was blocked off. 293 N.J. Super. at 317-18. After attending an event on defendant's property, plaintiff was struck by a car and killed while crossing the highway to return to her parked car. Ibid. We concluded "a business proprietor has a duty, at least under some circumstances, to undertake reasonable safeguards to protect its customers from the dangers posed by crossing an adjoining highway to an

area the proprietor knows or should know its customers will use for parking." Id. at 321.

We noted, however, our decision "d[id] not require the imposition of 'a similar duty upon all proprietors owning property abutting a public street who enjoy the "benefit" of traffic access from the street to their business enterprises.'" Id. at 323 (quoting MacGrath, 256 N.J. Super. at 255). Rather, we highlighted defendant's "negligently fail[ing] to take any measures to protect its customers from a transient dangerous condition created by [defendant]'s own business operation, specifically, the conduct of a large function which it knew or should have known would involve some patrons parking on the opposite side of a poorly illuminated county highway that had no crossing for pedestrians." Id. at 322-23.

Similarly, in Warrington, the plaintiffs were struck by a car while crossing the street to return to their vehicle, parked in defendant's parking lot across the street from its restaurant. 204 N.J. Super. at 613. We concluded defendant owed plaintiffs a duty, noting "the critical element should not be the question of the proprietor's control over the area to be traversed but rather the expectation of the invitee that safe passage will be afforded from the parking facility to the establishment to which they are invited." Id. at 617. We explained

"[c]ommercial entrepreneurs know in providing the parking facility that their customers will travel a definite route to reach their premises [and] [t]he benefiting proprietor should not be permitted to cause or ignore an unsafe condition in that route which it might reasonably remedy, whether the path leads along a sidewalk or across a roadway." Ibid.

On the other hand, in MacGrath, we rejected plaintiff's attempts to impose a duty on the defendant shopping center when plaintiff was struck by a car while crossing a highway to reach the bus stop after leaving defendant's business. 256 N.J. Super. at 249-50. We reasoned "it cannot be fairly suggested that the owner owes a duty to protect the pedestrian from the obvious hazards of the abutting highway." Id. at 253. Additionally, we noted our holding in Warrington was limited and provided "only that a commercial establishment which provides parking facilities for its patrons across a public roadway has a duty to exercise reasonable care for their safe passage from there to the commercial establishment and back." Id. at 254.

We reached a similar result in Buddy, a consolidated case in which two motorcyclist plaintiffs were hit by cars attempting to make an illegal left turn into defendant's gas station on two separate occasions. 469 N.J. Super. at 180-81. The plaintiffs argued defendant negligently created unsafe driveway

entrances to its lot, which encouraged the illegal left turns. Id. at 182. In finding defendant did not owe a duty to plaintiffs for injuries suffered off its premises, we held "a direct economic benefit to the commercial landowner from the path taken by the injured party and the absence of an alternative route" were "critical" facts weighed in a duty decision. Id. at 191 (quoting Kuzmicz, 147 N.J. at 519). We concluded "any economic benefit to [defendant] from customers making an illegal left turn into the driveway entrances is insufficient to create a legal duty," and highlighted the availability of a safe alternative route to access defendant's property which did not involve an illegal left turn. Id. at 193.

Our Supreme Court considered these "critical" factors in more depth in Kuzmicz, in which the plaintiff was assaulted while walking along a path in an unlighted, wooded, vacant lot. 147 N.J. at 512. Plaintiff sued the apartment complex where he lived, contending it owed "a duty to protect him by mending a bordering fence" between the complex and the vacant lot "or warning him of the risk of assault" on the vacant lot. Id. at 511. The Court concluded the complex owed plaintiff no duty, primarily because it did not benefit from plaintiff's use of the path and it "provided its tenants with a safe exit to the public sidewalks." Id. at 521-22.

Here, it is undisputed Wawa did not own the area of Delsea Drive where plaintiff was injured, nor did it have any form of control over it. We agree with Wawa and the court the exceptions to the general rule against imposition of a duty on a property owner for injuries suffered off-site are not applicable here. As noted in MacGrath, our decision in Warrington was limited to situations where a business provides off-site parking that requires crossing a street. MacGrath, 256 N.J. Super. at 254. Indeed, in Warrington we reasoned "[c]ommercial entrepreneurs know in providing the parking facility that their customers will travel a definite route to reach their premises." 204 N.J. Super. at 617 (emphasis added). Here, it is undisputed Wawa did not offer any off-site parking. Unlike in Warrington and Mulraney, each of which involved affirmative action by the defendant to direct the plaintiff's parking and thus the path they would take to reach the business, Wawa did not direct its customers to park on the shoulder of Delsea Drive.

Further, even if Wawa knew its patrons frequently parked illegally on the shoulder of Delsea Drive, we find it would be reasonable for Wawa to expect those customers to use the designated crosswalk about a half-block away to reach its store. As noted, the "absence of an alternative route" is "critical" to a duty determination. Buddy, 469 N.J. Super. at 191 (quoting Kuzmicz, 147 N.J.

at 519). The crosswalk provided an alternative route through which Wawa's customers who nevertheless chose to park across the street, including plaintiff, could safely cross Delsea Drive. Further, although we do not countenance illegal parking in any situation, we would be remiss were we not to note the existence of an identical shoulder on the other side of Delsea Drive, directly abutting Wawa's property and thus avoiding the danger of crossing the road at all. In contrast, there was no safer alternative route in Mulraney, and an imposition of duty was thus appropriate, where the plaintiff had to cross a "poorly illuminated county highway that had no crossing for pedestrians." 293 N.J. Super. at 323.

The other "critical" element discussed in Buddy was "a direct economic benefit to the commercial landowner from the path taken by the injured party." 469 N.J. Super. at 191 (quoting Kuzmicz, 147 N.J. at 519). Certainly, Wawa would receive an economic benefit from customers coming to its store, but its benefit was not derived "from the path taken by the injured party." Ibid. (quoting Kuzmicz, 147 N.J. at 519). Even accepting plaintiff's argument that Wawa "attracted and embraced business from drivers of tractor trailer rigs" who could not park in its lot, Wawa received no increased benefit from those drivers jaywalking across Delsea Drive rather than using the crosswalk.

Plaintiff's reliance on Brierly is also misplaced. In that case, plaintiff was struck by a car crossing the street to return to his car parked in defendant's lot. 396 N.J. Super. at 53. Plaintiff was not patronizing defendant's business, a car wash, but rather was eating at a restaurant across the street, which had an agreement with defendant to permit its customers to park in defendant's lot. Ibid. We concluded defendant's duty owed to customers using its lot "d[id] not extend to providing safe crossing over an abutting public highway" except as set forth in Warrington. Id. at 57. We reasoned the "critical relationship giving rise to the duty" was that of the restaurant and its customers, because the restaurant "chose the parking method and it was best positioned to assess the hazards it had created for its customers and to select the measure or combination of measures, such as lights, signs, valet service, or security guards that would best alleviate those hazards." Ibid. Here, to the contrary, Wawa did not provide parking on the shoulder of Delsea Drive nor direct its customers to park there, and the available crosswalk substantially alleviated any hazards of crossing.

We also find Ross v. Moore, 221 N.J. Super. 1 (App. Div. 1987), instructive. In that case, the plaintiff was unable to find an open space in the parking lot provided by defendant, a school where she was taking an adult education course, and instead parked at a shopping center across the street. Id.

at 4. While crossing the street, not at a crosswalk, plaintiff was struck by a car. Ibid. She argued defendant's parking lot constituted a dangerous condition because of its size limitations and "the reasonable foreseeability that an adult evening student en route to class, like plaintiff unable to park at the school, would park in the shopping center parking lot opposite the school and from there jaywalk across [the street] and be struck by a vehicle." Id. at 5.

Although our decision rejecting liability in Ross was based upon provisions of the Tort Claims Act, N.J.S.A. 59:1-1 to -12-3, we also declined to "extend Warrington to the facts" present there, noting in particular, defendant did not own or provide the parking lot across the street used by plaintiff. Ross, 221 N.J. Super. at 7. Additionally, in MacGrath, the court relied upon Ross, explaining that case "implied that the result would be no different if defendant had been a private party, by noting that 'no danger inhered in the school's property itself in the relative shortage of parking spaces; no danger was let loose on the school's property which resulted in injury to plaintiff on the adjoining public highway.'" MacGrath, 256 N.J. Super. at 252 (quoting Ross, 221 N.J. Super. at 5-6).

We reject plaintiff's argument that the design of Wawa's parking lot constituted a dangerous condition. In Buddy, we considered and rejected a

similar argument, explaining the defendant in that case had no duty to "change its parking lot design" despite its knowledge of "the dangerous nature of left turns into its driveway entrances." 469 N.J. Super. at 193. To hold otherwise without "specific conduct by the landowner enticing motorists to make illegal turns," we held, "would amount to an expansion of a duty to all commercial landowners along a State highway to prevent motor vehicle violations by potential customers and ameliorate the effects of those violations." Ibid.

Here, as in Ross and Buddy, no danger inhered in the nature of Wawa's parking lot itself. As noted, Wawa did not engage in any specific, affirmative conduct encouraging its customers to park on the shoulder of Delsea Drive, or to jaywalk across it. Plaintiff has pointed to no authority, nor have we located any, supporting his ostensible position that Wawa was required to provide him with a parking space large enough for a tractor trailer.

In sum, even if it was foreseeable that truck drivers would park on the opposite shoulder of Delsea Drive to reach Wawa due to the limitations of its parking lot, Wawa did not owe a duty to take further action to protect those customers who jaywalk across the street. Wawa did not direct its patrons to park on Delsea Drive, unlike Warrington and Brierly, nor did it take affirmative action to stop them from parking in its lot, unlike Mulraney. There was an

alternative route available for pedestrians to reach Wawa's store—the crosswalk—which was controlled by a traffic light, and, as in Buddy and Kuzmicz, Wawa received no increased benefit from its customers jaywalking across Delsea Drive rather than using the crosswalk. Based on all of these factors, combined with Wawa's lack of control or ownership of Delsea Drive, we are convinced the court did not err in finding Wawa did not owe plaintiff a duty.

Our conclusion is further supported by an analysis of the Hopkins factors. As noted, Hopkins directs a "fact-specific and principled" consideration of "whether the imposition of such a duty satisfies an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy." 132 N.J. at 439. The factors to be weighed are "the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution." Ibid.

With respect to the first factor, the parties' relationship, a brief discussion of the traditional approach to premises liability is in order.[3] Under that

[3] In Hopkins, the Court abandoned the traditional approach, holding "[t]he inquiry should be not what common law classification or amalgam of classifications most closely characterizes the relationship of the parties, but . . . whether in light of the actual relationship between the parties under all of the

approach, a property owner's duty is "predicated on the status of the person on the property at the time of injury," which may be categorized as business invitee, licensee, or trespasser. Desir, 214 N.J. at 316 (quoting Hopkins, 132 N.J. at 433). A business invitee is a "person . . . invited on the premises for purposes of the owner that often are commercial or business related." Hopkins, 132 N.J. at 433. Traditionally, a property owner owed a business invitee "a duty of reasonable care to guard against any dangerous conditions on his or her property that the owner either knows about or should have discovered." Id. at 434.

It is undisputed plaintiff was a business invitee at the time he remained on Wawa's property. Wawa invited the public, including plaintiff, onto its premises to sell gasoline, food, and other convenience store items for its commercial benefit. The parties dispute, however, whether plaintiff remained a business invitee when he was injured. We find it unnecessary to directly address Wawa's cross-appeal on this issue, because even assuming plaintiff was a business invitee at the time of his injury, that single factor in favor of imposition of a

---

surrounding circumstances the imposition on the [defendant] of a general duty to exercise reasonable care in preventing foreseeable harm to [the plaintiff] is fair and just." 132 N.J. at 438. Nevertheless, the common law classifications inform the first Hopkins factor.

duty on Wawa is insufficient to overcome the other three factors, each of which weigh against any duty.

The second factor is "the nature of the attendant risk," Hopkins, 132 N.J. at 439, which "focuses on 'whether the risk is foreseeable, whether it can be readily defined, and whether it is fair to place the burden o[f] preventing the harm upon the defendant,'" Underhill, 463 N.J. Super. at 560 (quoting Davis v. Devereaux Found., 209 N.J. 269, 296 (2012)). Due to the "obvious hazards of the abutting highway," MacGrath, 256 N.J. Super. at 253, the risk of a customer being struck by a car while crossing Delsea Drive is foreseeable and capable of being readily defined. We agree with the court, however, that it would not be "fair to place the burden o[f] preventing the harm" squarely upon Wawa, who neither owns nor controls the highway, nor is responsible for regulating traffic. Underhill, 463 N.J. Super. at 560 (quoting Davis, 209 N.J. at 296). This is particularly true here, where the party responsible for regulating traffic and preventing such accidents has taken appropriate precautions by providing a traffic-controlled crosswalk.

These facts also inform our consideration of the third Hopkins factor, "the opportunity and ability to exercise care." 132 N.J. at 439. Again, we are satisfied the court appropriately found Wawa had some ability to take additional

precautions, but that ability was severely limited by Wawa's lack of control over Delsea Drive. Wawa could not install another crosswalk or traffic light, or make any modifications to the highway. Further, in our view, the precautions plaintiff suggested, such as hiring an off-duty police officer, would provide no substantially greater protection than the already-present traffic-controlled crosswalk.

Finally, we again agree with the court's conclusion as to the fourth Hopkins factor, the "public interest in the proposed solution." 132 N.J. at 439. As it noted, "there is a public interest in providing safe passage across a highway for individuals," already present in the crosswalk. A decision not to impose a duty upon Wawa may limit the ability of people injured by cars crossing the street in similar situations to seek recourse for their losses, but they are not entirely without a remedy as they may still bring claims against the driver of the car who struck them, or the party responsible for the design and maintenance of the street, as appropriate.

Considering each of these factors, together with the relevant case law, we are convinced the court's decision not to impose a duty on Wawa was appropriate and supported by both the law and the facts. A determination that Wawa owed a duty to do more here would not satisfy "an abiding sense of basic fairness

under all of the circumstances in light of considerations of public policy." 132 N.J. at 439. As noted, in light of our decision, we need not, and do not, directly address Wawa's cross-appeal.

Affirmed.