

**IN THE SUPREME COURT
STATE OF ARIZONA**

PHOENIX UNION HIGH SCHOOL DISTRICT NO. 210,
Petitioner/Defendant

v.

HON. JOAN M. SINCLAIR, Judge of the SUPERIOR COURT OF THE STATE
OF ARIZONA, in and for the County of MARICOPA,
Respondent Judge

and

CHRISTOPHER A. LUCERO, a minor child, by and through his natural father,
CHRISTOPHER J. LUCERO,
Real Party in Interest/Plaintiff

Arizona Supreme Court
CV-24-0307-PR

Arizona Court of Appeals
Division One
1 CA-SA 24-0205

Maricopa County Superior Court
CV2022-005719

REAL PARTY IN INTEREST'S SUPPLEMENTAL BRIEF

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INTRODUCTION

Real-Party-in-Interest/Plaintiff Christopher Lucero (“Plaintiff”) hereby submits his supplemental brief pursuant to the Court’s April 2, 2025 order. Plaintiff herein describes why the Court should affirm the Superior Court’s March 6, 2024 Underadvisement Ruling denying the Appellant/Defendant Phoenix Union High School District No. 210’s (“the District”) motion for summary judgment.

STANDARD OF REVIEW

Arizona appellate courts “review the entry of summary judgment de novo, viewing the facts in the light most favorable to the nonmoving party.”¹

FACTUAL BACKGROUND

The facts of this case have previously been described in Plaintiff’s response brief at pages 4-10 and are incorporated herein for reference. Plaintiff includes here again a blown-up version of the overhead view of the area around Betty Fairfax High School² for both ease of reference and because it provides context for understanding the scope of the duty owed to the District’s student, Christopher “CJ” Lucero, Jr.

¹ *Perez v. Circle K Convenience Stores, Inc.*, ___ Ariz. ___, 564 P.3d 623, 2025 Ariz. LEXIS 98, **3 ¶ 6 (Mar. 12, 2025) (quoting *Dinsmoor v. City of Phoenix*, 251 Ariz. 370, 373 ¶ 13 (2021)).

² Plaintiff’s Appendix (Appx.) Ex. 1. This exhibit is from the report of defense expert Randy Dittberner, P.E., PTOE.

Figure 1: Approximate Crash Location and Vicinity



ARGUMENT

The District seeks the creation of a remarkable new legal rule that schools and school districts owe no duty of care to their students until the student is on school property and within the school’s custody and control. It advocates for no duty to be owed and for the school and its parent district to be immune from all negligence claims as a matter of law even if its student is injured by an unreasonably dangerous condition trying to cross the street to enter the school. Even if the school created the unreasonably dangerous condition, even if the school knew about it and ignored it, the District argues it is not liable when its negligence causes a serious injury to one of its students.

That is not the law in Arizona, either for schools or any other business or entity open to the public. All such entities in Arizona—including and especially schools—have a duty to patrons to make access to their premises reasonably safe. This has been the law in Arizona since at least the 1960s,³ and there are multiple examples in a variety of contexts of this rule being applied to find that a duty was owed by a defendant to a plaintiff injured outside the defendant’s property. In *Stephens v. Bashas’ Inc.*, this Court held that a grocer owed a duty to an invitee injured on the adjacent public street because businesses have a duty to provide a reasonably safe

³ *O’Rielly Motor Co. v. Rich*, 3 Ariz. App. 21, 26 (1966) (holding that business inviters owe a “duty to invitees to provide reasonably safe means of ingress and egress” to their premises).

means of ingress and egress for invitees.⁴ In *Udy v. Calvary Corp.*, the Court of Appeals held that a landlord owed a tenant-child a duty even though the child was injured when he ran into a busy road next to the unfenced premises.⁵ And in the school context, the Court's recent opinion in *Dinsmoor* approved of the logic and holding of *Warrington v. Tempe Elementary School District No. 3*, where the Court of Appeals held that a school district owed a duty of care to a student injured while walking home from a school bus stop.⁶

The Court anticipated the exact situation in the instant case in *Dinsmoor* when it affirmed that a duty is owed by a school to a student injured because a school did not provide a safe way for students to get to campus:

[A] school's duty to provide a reasonably safe means of ingress and egress does not evaporate if a student is injured off campus while trying to enter school property to attend classes.⁷

That is exactly what happened here. CJ Lucero was injured while trying to enter school property to attend class. The District both created and fostered without any warning to students or parents the unreasonably dangerous condition around BFHS that was a cause of CJ's injury. It owed a duty of care to its students like CJ, and

⁴ 186 Ariz. 427, 430-31 (App. 1996).

⁵ 162 Ariz. 7, 11 (App. 1989).

⁶ 251 Ariz. at 375-76 ¶ 23 (citing *Warrington v. Tempe Elementary School District No. 3*, 187 Ariz. 249, 253 (App. 1996)).

⁷ *Id.* (citing *Stephens*, 186 Ariz. at 430-31).

what happened to him fits within the scope of that duty. Accordingly, the trial court's denial of summary judgment should be affirmed so this matter can proceed to a jury trial on the factual issues of breach, causation, comparable fault, and damages.

I. The District owed CJ a duty of care as its student.

“Duties are based either on special relationships recognized by the common law or on relationships shaped by public policy.”⁸ In this case, CJ Lucero was indisputably a student at Betty Fairfax High School on the day of the collision and thus the District owed him a duty of care based on the school-student relationship.

II. The traffic on 59th Avenue abutting BFHS was unreasonably dangerous.

The school-student relationship includes “an affirmative duty on schools to protect students from unreasonable risks of harm.”⁹ The undisputed evidence is that the area around BFHS posed an unreasonable risk of harm to CJ and other BFHS students. A few days after CJ was struck and injured, the City of Phoenix's School Safety Coordinator Don Cross observed approximately 100 kids jaywalking across 59th Avenue every morning and afternoon during drop-off and pick-up.¹⁰ Both Mr.

⁸ *Perez*, 2025 Ariz. LEXIS 98, *4 ¶ 7 (citing *Dinsmoor*, 251 Ariz. at 373 ¶ 14)

⁹ *Dinsmoor*, 251 Ariz. at 373-74 ¶ 15.

¹⁰ Appx. Ex. 2 at 123:12-17

Cross¹¹ and the current principal and then-assistant principal of BFHS Jef Heredia¹² testified that 59th Avenue during those times was unsafe for students. No defense fact or expert witness has rebutted this evidence or attempted to argue that dozens of students jaywalking through “hectic”¹³ traffic twice a day to get to and from the campus was acceptable or safe. Nor could they since it is so obviously dangerous.

This dangerous condition was created by not just the existence of the school and concomitant parent, teacher, and student traffic, but also because of the errors and omissions of BFHS administrators. There was no traffic or safe walking plan created for BFHS when the school was opened or anytime thereafter.¹⁴ The school’s ad hoc parent pick-up and drop-off scheme that did develop after the school opened resulted in a long line of southbound traffic on 59th Avenue backing up to turn left into the school.¹⁵ This caused dozens of parents and their students to park in a dirt lot across the street on the west side of 59th Avenue and have their kids jaywalk

¹¹ Appx. Ex. 2 at 123:18-124:22, 139:9-14 (testifying that 100 kids crossing 59th Avenue mid-block outside of a crosswalk twice a day at the highest traffic time for 59th Avenue “was an *unsafe condition* that was created by the amount of cars in the area and then the students crossing in between the cars” and agreeing that 59th Avenue during pick-up and drop-off was “*not a safe place for students*” (emphases added)).

¹² Appx. Ex. 7 at 54:8-16 (“I would think 100 people jaywalking would be a safety issue.”).

¹³ Appx. Ex. 8 at 34:17-23.

¹⁴ Appx. Ex. 4 at 33:15-34:1.

¹⁵ Appx. Ex. 7 at 36:14-19.

across the street to avoid the long line.¹⁶ The kids jaywalking across 59th Avenue also included kids coming to and from the shopping area at Baseline and 59th Avenues to the northwest of the school.¹⁷ The District never did anything to warn parents or students about traffic issues around the school, to tell them not to park across the street, to instruct students how they should safely cross 59th Avenue, or to describe the procedure for parent pick up or drop off.¹⁸ Parents and students were just supposed to learn the BFHS parking and pickup/drop-off procedure “by seeing the flow of traffic.”¹⁹ Nor did the District ask the City of Phoenix for help with the dangerous traffic situation around the school before CJ was injured. Rather than protect its students, as the duty imposed by the school-student relationship required, the District perpetuated the unreasonable risk of harm it had created.

III. The scope of the duty the District owed to CJ included protecting him from unreasonable risks of harm as he tried to cross the street to school.

A. All businesses and entities open to the public, including schools, owe a duty to provide a safe means of ingress and egress.

The District’s primary argument is that because CJ was struck in the street

¹⁶ Appx. Ex. 2 at 122:15-123:23 (Mr. Cross in 2021 observed a lot of parents parking on west side of 59th Ave and allowing kids to cross 59th Ave); Appx. Ex. 10, Letter from Elizabeth Douglas to City, District, and Maricopa County officials, LUC-COP002707-08 (describing parents parking in dirt lot and kids “darting around traffic” to get to and from school in 2012-14 when she was a teacher at BFHS).

¹⁷ Appx. Ex. 2 at 130:1-7.

¹⁸ Appx. Ex. 8 at 45:8-25, 48:17-49:2.

¹⁹ Appx. Ex. 7 at 17:19-25.

adjacent to the school rather than on school property, it owed him no duty of care. This is wrong.

Duties based on special relationships apply to “risks that arise within the scope of the relationship” and are “bounded by geography and time.”²⁰ In Arizona, the scope of the duty that business invitees owe to their inviters includes a duty to protect them from unreasonable risks of harm while entering or leaving the business.²¹ In *Dinsmoor*, the Court expressly acknowledged that the scope of the duty schools owe their students includes this duty to protect students coming to or leaving from the school.²² Moreover, this duty does not “evaporate” if the student is “injured off campus while trying to enter school property to attend classes.”²³

That is exactly what the District is arguing here. The District claims that its duty to CJ “evaporated” simply because he was a few feet away from the school fence when he was injured. Essentially, the District argues that not only should the Court ignore what it said in *Dinsmoor* but that it should create an entirely new and much narrower duty rule excepting schools from owing a duty of care to students—and presumably parents or any other member of the public as business invitees—

²⁰ *Dinsmoor*, 251 Ariz. at 374 ¶ 17 (internal quotation marks and citations omitted).

²¹ *Stephens*, 186 Ariz. at 430-31; *Udy*, 162 Ariz. at 11; *O’Rielly Motor Co.*, 3 Ariz. App. At 26.

²² *Id.* at 376 ¶ 23.

²³ *Id.*

when they are trying to get to or leave the school grounds.

This would be a radical change in Arizona law, undoing decades of precedent. CJ was hit and injured as he was attempting to enter the campus in the middle of the street adjacent to the school. This precisely corresponds with the location where the plaintiff in *Stephens* was injured: in the middle of the street adjacent to the defendant grocery store.²⁴ Just as the defendant in *Stephens* was found to owe a duty of care, so must the District also be held to have owed CJ a duty of care. There is no public policy basis for excepting schools among all Arizona owners of property open to the public from the duty to provide safe ingress and egress. In fact, because children and teenagers require more protection and care than fully-grown adults, if anything the scope of a school's duty to protect its students from unreasonable risks of harm while coming to and leaving school should be interpreted as broadly as possible. It certainly cannot be narrowed to exclude owing a duty to students hit crossing the street to get to campus.

B. *Monroe v. Basis Schools* is in a different category of case.

To attempt to avoid the obvious implication of *Dinsmoor*, *Stephens*, and the other Arizona cases establishing that the District owed CJ a duty of care when he was hit crossing the street to school, the District makes the bizarre argument that CJ

²⁴ 186 Ariz. at 429. The injured child in *Udy* was also injured on an adjacent street, 162 Ariz. at 10, and the customer plaintiff in *O'Rielly Motor Co.* was injured landing on the ground *outside* the fence around the car dealer's property, 3 Ariz. App. at 23.

was not trying to *enter* the school he was only *traveling to* the school. This is nonsense and a distinction without difference given that CJ was injured only a few feet away from the school fence by an unreasonable risk of harm the school created. The duty to provide safe ingress and egress includes the street outside the school, as the Arizona cases on point have consistently and logically found.

By arguing that CJ was not entering the school but rather “traveling” to school, the District tries to bring this case within the scope of the holding in *Monroe v. Basis Schools, Inc.*²⁵ In *Monroe*, the Court of Appeals found that the defendant school did not owe a duty of care to a student bicycling home from school who was hit by a truck and injured at an intersection one block from the campus.²⁶ Not only was the intersection geographically removed from the school, there was no argument nor any facts suggesting that anything the defendant school had done had made the intersection more dangerous.²⁷ Rather, the plaintiff’s argument was that the school had not installed a crossing guard at the intersection to protect the plaintiff from the typical risks of motor vehicles on city streets.²⁸

As the Court described in the landmark duty case *Gipson v. Kasey*, “the issue

²⁵ 234 Ariz. 155 (App. 2014).

²⁶ *Id.* at 157 ¶ 2.

²⁷ *Id.* at 159 ¶ 11 (“The central question before us does not concern . . . any affirmative conduct on the part of BASIS.”).

²⁸ *Id.* ¶ 3.

of duty involves generalizations about categories of cases.”²⁹ Although a detailed factual analysis is inappropriate for the legal inquiry into duty, a limited look into some facts of the case is necessary to determine in which category the case belongs and whether a duty exists.³⁰ When the facts of *Monroe* and the instant case are compared, it is easy to see that they belong in different categories. This case, like *Stephens* and others, involved a plaintiff injured in the street abutting the defendant’s property. *Monroe*, in contrast, involved an intersection a block away from the school. Nor was there any allegation in *Monroe* that the defendant school had done anything to create an unreasonable risk of harm to its student. If anything, *Monroe* strengthens the argument for finding that the District owed CJ a duty of care because this case is so different from *Monroe*.

The Court implicitly agreed with this analysis in *Dinsmoor* when it acknowledged and affirmed *Monroe* but went on to say that neither *Monroe* nor its *Dinsmoor* opinion established a “bright-line rule barring recognition of the school-student duty whenever the student suffers harm while outside the school’s supervision and control”³¹ This case is the flip side of the *Monroe* coin, where a student was injured on the threshold of the school grounds while trying to enter the

²⁹ 214 Ariz. 141, 143 ¶ 10.

³⁰ See *Perez*, 2025 Ariz. LEXIS 98 at **13-14 ¶ 20 (holding that “sometimes certain antecedent facts must be considered in determining whether a duty exists”)

³¹ 251 Ariz. at 375 ¶ 22.

campus by an unreasonable risk of harm the school created, was aware of, and did nothing to warn of or ameliorate. As such, the harm that CJ suffered was one that the District had a duty to protect him from.

C. The District’s other miscellaneous arguments fail.

To try to avoid the inescapable conclusion that it owed a duty of care to protect its student injured crossing the street to get to the campus, the District raises several other arguments. It attempts to argue that because it did not have “custody” of CJ at the time he was injured, thus no duty was owed. But the school-student relationship is multi-faceted. “The school is a custodian of students, it is a land possessor who opens the premises to a significant public population, and it acts partially in the place of parents.”³² *Dinsmoor* involved the school’s custodial relationship with the murder victim, and the Court found that once the student left the school’s custody and control that its special relationship with and duty to her ended.³³ This case involves a different aspect of the school-student relationship: the school’s role as land possessor and its role controlling both “students *and their environment*, enabling it to identify and eliminate risks”³⁴ The school’s failure to control or take custody over CJ that is not the issue in this case, but rather its failure to identify and eliminate

³² *Id.* at 374 ¶ 15 (quoting *Restatement (Third) of Torts: Liability for Physical Harm* § 40 cmt. 1 (Am. Law Inst. 2012)).

³³ *Id.* at 375 ¶ 20.

³⁴ *Id.* (emphasis added).

the risk to its students that it had created in the environment around the school.

The District also makes several fact-intensive arguments that address breach, causation, or comparative fault, but not duty. For example, the fact that CJ was “illegally jaywalking” when he was hit may be relevant to these other issues but is irrelevant to whether he was owed a duty by BFHS at the time. Similarly, the facts that CJ could have used the signalized intersection crosswalk on Baseline about a quarter mile to the north to cross 59th Avenue or that he could have stayed on the east side of 59th Avenue when traveling from his home have nothing to do with the school’s duty owed to him.

The District also tries to factually distinguish *Stephens* because, the District claims, in that case the plaintiff was first denied access to the property before being injured in the street abutting the property as CJ was. But this factual argument compares the specifics of both the defendant’s and the plaintiff’s conduct in the two cases. These facts are for the jury to consider in evaluating breach and causation. The District’s recitation of the details of who exactly went where to try to distinguish *Stephens* from this case goes far beyond the legal inquiry into duty and violates the Court’s admonition to avoid defining duties of care “in terms of the parties’ actions in particular cases.”³⁵

³⁵ *Perez*, 2025 Ariz. LEXIS 98 at **11-12 ¶ 18 (citing and quoting *Gipson*, 214 Ariz. at 145 ¶ 21).

The District also mischaracterizes its duty as only arising out of its “knowledge of a risk of harm and the ability to ameliorate that risk,” citing *Collette v. Tolleson Unified School District*.³⁶ While *Collette* was brought by an injured party suing a school, that case involved the school’s alleged duty to control its student to prevent him from injuring the plaintiff, and the language the District quotes related to the lack of a “common law duty to control a third person so as to prevent harm from befalling another.”³⁷ That is not this case. While the District did have knowledge of the risk of harm it had created for students trying to get to school and did have the ability to mitigate that risk, that has never been the source of the District’s duty. As the Court said in *Dinsmoor*, the duty the District owed to CJ arises out of the school-student relationship which includes “a school’s duty to provide a reasonably safe means of ingress and egress.”³⁸

CONCLUSION

The District owed CJ a duty of care. This Court has previously found that, consistent with a long line of cases establishing a similar duty for businesses to their invitees, the scope of a school’s duty to its students includes a duty to protect them from unreasonable risks of harm while getting to and leaving the school. CJ was

³⁶ 203 Ariz. 359, 363 ¶ 13 (App. 2002).

³⁷ *Id.*

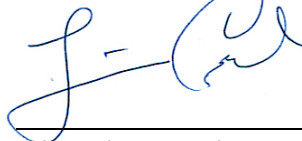
³⁸ 251 Ariz. at 376 ¶ 23.

injured while trying to cross the street to get to school, and a cause of CJ's injury was the unsafe condition around the school which the school had created and fostered over many years. Plaintiff's claims thus arise from the school-student relationship and the District owed CJ a duty of care.

Accordingly, Plaintiff respectfully requests that this Court affirm the trial court's denial of summary judgment.

RESPECTFULLY SUBMITTED this 21st day of April 2025.

O'STEEN MACLEOD COMBS PLC

A handwritten signature in blue ink, appearing to read 'J. Combs', is written over a horizontal line.

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