

Who's Responsible – The Person Who Sent The Text Or The Person Who Reads It?

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We are taught from an early age by parents, teachers and people in authority that we are responsible for our mistakes. There may be an exception to this in New Jersey, especially if you are the one who is texting a person who is driving.

Recently, Appellate Division of the New Jersey Superior court decided a case involving the responsibility of an individual texting (Shannon) from her home to her friend (Kyle) who was involved in a car accident in Morris County while he was texting. The evidence in this case showed that Shannon and Kyle, had texted each other 62 times on the day of the accident. At the time of the accident, Kyle, who was driving, had just replied to Shannon's text. Kyle's vehicle crossed the double yellow line and struck a motorcycle causing life changing injuries to the driver and passenger of the motorcycle. The

couple, Linda and David, each had a part of their legs amputated as a result of the accident. They not only sued Kyle (the driver) but also sued Shannon (the texter). The issue to be decided was: should Shannon be held responsible in a civil negligence lawsuit because she sent a text and should have known that Kyle would reply to her text while he was driving.

The judge at the trial dismissed the case finding that Shannon did not have a legal duty to avoid sending a text message even if she knew Kyle was driving. However, the appeals court created new law by ruling that in certain circumstances someone who texts (that is the “texter”) could be held responsible for the accident in civil court. The appellate court ruled that a person sending text messages has a duty not to text someone if the texter knows, or has special reason to know, that the recipient is driving and will view the text while driving.

The court did state that it is the primary responsibility of the driver to obey the law and avoid distractions. There is a law in New Jersey prohibiting the use of a cell phone that is not hands-free, except in certain emergency situations. In this case the appellate court found that there was no evidence to show that Shannon knew Kyle was driving and there was no evidence to show that Shannon knew that Kyle would immediately reply to her texts. The actual text messages were not available for the court’s review.

This case represents the unique circumstances of today’s ever expanding technological society with smart phones, GPS devices, etc. The bottom line, however, is distractions.

Every generation has had distractions while driving. Drivers get be distracted changing the radio, daydreaming, lighting a cigarette, putting on makeup, talking to passengers, drinking a soda, eating, and talking or texting on a cell phone. Any split second distraction can be a factor in a car accident. The question becomes: where is the line drawn on responsibility? The driver with a cell phone in his car does not have to look at his phone and reply to the text. His job, so to speak, is to drive, look straight ahead, and get to his destination safely. He has a choice to look at his phone. No one can force him to reply to a text message. The same analogy applies to drinking and driving. A driver has a choice not to drink and drive.

On the other hand, the lives of the injured driver and passenger were changed forever because of today's technology — a text message. They have the civil right to blame everyone. In Linda and David's minds, the person sending the text started the whole process. If the text hadn't been sent then the driver would not have been distracted by the text noise and would not have felt a potential urgency to reply.

Based upon the appellate court's decision, even though a texter can be held responsible, proving that the texter knew that the receiver was driving and also proving that the texter knew that the receiver would look at the text is extremely difficult. The biggest hurdle is that the texter is not present in the car and cannot encourage the driver to reply to the text. One way to meet the standard of proof would be if there is detailed evidence that the texter was told by the driver that he was getting in the car to drive home and, in addition, there is proof of actual text messages showing that a driver always replies to texts when driving. Another example is if there is proof that the texter sent a text saying "I know you are driving home but can you pick up some milk at the store?" Even then there has to be some type of proof that the texter knew that the driver would reply to the "bring home the milk" text while he was still driving.

Although there are difficulties of proving the liability of a texter, if nothing else, this case brings the issues of responsibility and driving while distracted to the attention of New Jersey drivers and may make a texter think twice before texting someone who may be driving. The dangerous choices of texting while driving and texting to a driver may have to be decided by New Jersey's highest court, the New Jersey Supreme Court and may ultimately be an issue one day for the United States Supreme Court.

In response to the Appellate Court's decision, in November 2013 Assemblywoman Caroline Casagrande, R-Monmouth, introduced a bill that would place accountability for distracted driving squarely with the driver.

The fact that technology is marching onward does not change the fact that we all have to own up to our own responsibilities.