IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES J. TALMO and LORRAINE TALMO,	)	No. 752, 2010
Plaintiffs Below, Appellants,	)	Court Below: Superior Court of the State of Delaware in and for New Castle County
v.	)	C.A. No. 09C-06-258
UNION PARK AUTOMOTIVE,	)	
Defendant Below, Appellee.	)	

Submitted: March 23, 2011
Decided: April 12, 2011

Before **STEELE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

O R D E R

This 12th day of April 2011, it appears to the Court that:

(1) After a Superior Court judge granted summary judgment to Union Park Automotive Group, Inc., she denied James and Lorraine Talmo's Motion for Relief from Judgment. Her order denying the Talmos' motion merely incorporated by reference Union Park's response to that motion. Because the judge appears to have relied upon an incorrect factual statement in Union Park's response, we VACATE the judgment of the Superior Court and REMAND.

(2) The Talmos allege that, on July 2, 2007, James Talmo sustained injuries when he walked into a plate glass window on the business premises of

Union Park that he thought was an opening to the outside. The Talmos filed a complaint in the Superior Court on June 25, 2009 seeking damages for personal injuries and loss of consortium that allegedly resulted from the incident. They claimed primarily that Union Park negligently failed to take reasonable steps to secure the business premises for business invitees like Talmo. Union Park filed an answer on July 23, 2009, and asserted eight affirmative defenses. On August 31, 2009, the Superior Court entered a trial scheduling order which included various filing and other deadlines, including one for the Talmos' to file their expert report on or before July 9, 2010.

(3) On September 24, 2010, Union Park moved for summary judgment on the basis that, notwithstanding the deadline the trial scheduling order had imposed, the Talmos had not disclosed any expert opinion on Union Park's liability. That same day, Union Park moved separately for partial summary judgment with respect to damages on the ground that the Talmos had produced no opinions linking Talmo's alleged injury to the accident at Union Park.

(4) Four days later, on September 28, 2010, the Superior Court judge assigned to the case sent the Talmos' attorney two separate letters. In one letter, the judge stated that she had received Union Park's Motion for Summary Judgment, and that she would deem failure to respond by October 28, 2010 a lack of opposition to the motion. In the other letter, the judge stated the same

conditions with respect to Union Park's Motion for Partial Summary Judgment. The Talmos responded to Union Park's Motion for Partial Summary Judgment on October 26, 2010, but did not respond to Union Park's Motion for Summary Judgment. Consequently, on November 5, 2010, the Superior Court judge granted Union Park's Motion for Summary Judgment. In the order granting summary judgment, the judge explained that the entry of summary judgment mooted Union Park's Motion for Partial Summary Judgment.

(5) On November 15, 2010, the Talmos moved for relief from judgment on the ground that their attorney had never received a copy of Union Park's Motion for Summary Judgment on liability or the judge's letter establishing a deadline to respond. Union Park filed a response to the Talmos' motion on the same day. On November 22, 2010, the Superior Court judge denied the Talmos' motion "for the reasons set forth in [Union Park's] response."[1] The Talmos now appeal from that order.

(6) We review the denial of a motion for relief from judgment under Superior Court Civil Rule 60 for abuse of discretion.[2]

(7) Failure to provide reasons for a judicial determination constitutes an abuse of discretion.[3] In *B.E.T., Inc. v. Board of Adjustment of Sussex County*, we

[1] *Talmo v. Union Park Automotive*, C.A. No. 09C-06-258 (PLA), (Del. Super. Nov. 22, 2010).
[2] *Bachtle v. Bachtle*, 494 A.2d 1253, 1256 (Del. 1985).
[3] *Husband M v. Wife D*, 399 A.2d 847, 848 (Del. 1979).

explained that "it is part of a trial judge's adjudicative responsibilities to state the reasons for his action, no matter how briefly."[4] Elaborating upon that principle, we explained that "[a] judicial 'short cut' of this mandate, by the mere incorporation by reference of a party's brief as the Court's opinion, may not be countenanced by this Court."[5] We have repeatedly reaffirmed this principle.[6]

(8) In this case, a Superior Court judge denied the Talmos' motion "for the reasons set forth in [Union Park's] response."[7] It appears that the Superior Court relied on an incorrect factual allegation included in Union Park's response. Among other assertions, Union Park's response stated that "while the moving papers aver one pleading was not received, they fail to set forth a denial of receipt of the Court's directive regarding the filing of responses and what inquiry if any was made to respond to the Court's directive regarding a pleading that counsel avers was not received."[8] In fact, the Talmos did allege that their attorney failed to receive the judge's letter.[9] The judge's apparent reliance upon this incorrect factual allegation is an abuse of discretion and reversible error.

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[4] *B.E.T., Inc. v. Board of Adjustment of Sussex County*, 499 A.2d 811, 812 (Del. 1985) (quoting *Ademski v. Ruth*, 229 A.2d 837, 838 n.1 (Del. 1967)).
[5] *Id.*
[6] *See, e.g., Ball v. Div. of Child Support Enforcement*, 780 A.2d 1101, 1104 (Del. 2001).
[7] *Talmo v. Union Park Automotive*, C.A. No. 09C-06-258 (PLA), (Del. Super. Nov. 22, 2010).
[8] Def. Resp. Pl.'s Mot. Rel. J. ¶ 10.
[9] Pl.'s Mot. Rel. J. ¶ 5. ("[U]ndersigned counsel did not receive a letter from the Court establishing a deadline to respond to such motion, as he had with the Motion for Partial Summary Judgment.").

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is VACATED and the matter is REMANDED so that the Superior Court may consider the Talmos' motion *ab initio* and, thereafter, file an order or opinion stating the reasons for its decision.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice