

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF INSURANCE, FINANCIAL)
INSTITUTIONS AND PROFESSIONAL)
REGISTRATION,)
)
) Petitioner,)
)
) vs.)
)
DUSTIN BROOKS,)
)
) Respondent.)

No. 14-0308 DI

DECISION

We grant summary decision and find that Dustin Brooks is subject to discipline because he committed a criminal offense involving moral turpitude and failed to renew his license.

Procedure

On March 6, 2014, the Director of the Department of Insurance, Financial Institutions and Professional Registration (the “Director”) filed a complaint seeking to discipline Brooks. On March 14, 2014, Brooks was served a copy of the complaint and our notice of complaint/notice of hearing by certified mail. He did not file an answer to the complaint.

On June 25, 2014, the Director filed a motion for summary decision. Regulation 1 CSR 15-3.446(6)¹ provides that we may decide this case without a hearing if the Director establishes facts that Brooks does not dispute and entitle the Director to a favorable decision.

¹ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

We gave Brooks until July 10, 2014 to respond to the motion, but he did not respond. On July 15, 2014, David A. Dalton, II, entered his appearance and requested leave to respond to the Director's motion and the Director's request for admissions. We granted leave and accepted the response to the motion and the responses to the request for admissions on July 16, 2014. By the same order, we set a deadline of August 15, 2014 for Brooks to file an answer to the complaint.

On July 21, 2014, we granted leave for the Director to file a reply to the response to his motion for summary decision, which we received on July 25, 2014.

Based on the affidavits and certified court records filed in this matter, the following facts are undisputed.

Findings of Fact

1. On February 23, 2012, Brooks was issued an insurance producer license for certain lines of insurance.
2. The license expired on February 23, 2014, when Brooks failed to renew it.
3. On September 17, 2013, Brooks pled guilty and was sentenced for the crime of child molestation in the 2nd degree, a Class A misdemeanor.
4. The crime occurred when Brooks lured a minor male to the Troy, Missouri, Fire Department, promising to discuss a job opportunity with the victim.
5. When the victim attempted to get past Brooks to leave the station, Brooks grabbed the boy's penis over his clothes and offered the boy money to expose his bare penis.

Conclusions of Law

We have jurisdiction to hear the Director's complaint.² The Director has the burden of proving Brooks has committed an act for which the law allows discipline.³ When deciding a

² Section 621.045. Statutory references are to the 2013 supplement of the revised statutes of Missouri unless otherwise noted.

³ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

motion for summary decision, we view the facts and the inferences from those facts in the light most favorable to the non-moving party. The burden is on the movant to establish both the absence of a genuine issue of material fact and that he is entitled to a favorable determination as a matter of law.⁴ Parties may establish a fact, or raise a dispute as to such facts, by admissible evidence.⁵ The Director relies on the documents submitted with the motion: his affidavit of Brooks' licensure and certified copies of court records. The records are admissible pursuant to § 490.130 and § 536.070(6). Once a motion for summary decision is made and properly supported, the non-moving party may not rest on the allegations in his pleadings. Instead, the non-moving party, by affidavit and other admissible evidence, must set forth specific facts showing that a genuine issue of material fact exists.⁶

The Director argues there is cause for discipline under § 375.141, which provides:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

* * *

4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee failed to renew or has surrendered such license.

In his response to the Director's motion for summary decision, Brooks denies those paragraphs specifically related to the facts underlying the charge of child molestation, but does not provide admissible evidence to create a genuine issue of material fact. The certified court

⁴ *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

⁵ 1 CSR 15-3.446(6)(B).

⁶ *ITT Commercial Fin. Corp.* at 376.

records to prove Brooks pled guilty to child molestation in the second degree, a Class a misdemeanor.⁷

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”^[8]

In our determination of whether Brooks’ crime involved moral turpitude, we are guided by the analysis in *Brehe v. Missouri Dept. of Elementary & Secondary Education*,⁹ which referred to three categories of crimes:

1. crimes that necessarily involve moral turpitude, such as fraud (Category 1 crimes);
2. crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
3. crimes that “may be saturated with moral turpitude,” yet do not necessarily involve it, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).¹⁰

Category 1 crimes, such as murder, rape, and fraud, are invariably crimes of moral turpitude, and Category 3 crimes require inquiry into the circumstances.¹¹ We previously determined that 2nd degree child molestation is a Category 1 crime¹² Accordingly, Brooks committed a crime involving moral turpitude and is subject to discipline under § 375.141.1(6).

Brooks failed to renew his producer license before it expired on February 23, 2014. The license is subject to revocation or suspension pursuant to § 375.141.4.

⁷ Section 566.068, RSMo. 2000.

⁸ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

⁹ 213 S.W.3d 720 (Mo. App. W.D. 2007).

¹⁰ *Id.* at 725 (quoting *Twentieth Century Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

¹¹ *Id.*

¹² *Missouri Dental Board v. Troy r. Van Opdorp*, No. 11-0280 DB (Mar. 18, 2013).

Summary

We grant the motion for summary decision. Brooks is subject to discipline because he committed a crime involving moral turpitude and failed to renew his license.

SO ORDERED on September 18, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner