

Pursuant to 1 CSR 15-3.446(6)(A),² we may decide a motion for summary decision if a party establishes facts that entitle that party to a favorable decision and there is no genuine dispute as to such facts. Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.³

By failing to answer or otherwise respond to the complaint, Morgan has admitted the allegations it contains.⁴ By failing to respond to the motion for summary decision, Morgan has not raised any issue as to the facts the Director established in his motion and by the accompanying documentary evidence.⁵

Accordingly, the findings of fact are based on the complaint and admissible documents attached to the Director's motion. These facts are not disputed.

Findings of Fact

1. Morgan held a valid peace officer license, issued by the Director, at all relevant times.
2. On November 11, 2012, Morgan kicked in the front door of another person's home and entered the home.
3. Morgan was charged with first degree property damage, a felony, for the destruction of the front door.
4. On February 18, 2014, in the Circuit Court of Jackson County, Missouri, Morgan was found guilty, on her plea of guilty, to the misdemeanor crime of property damage in the second degree as set forth in § 569.120.⁶

² 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.

³ 1 CSR 15-3.446(6)(B).

⁴ 1 CSR 15-3.380(7)(C).

⁵ 1 CSR 15-3.446(6)(B).

⁶RSMo 2000. Statutory references are to RSMo Supp. 2013 unless otherwise noted.

5. Her sentence was 180 days in the Jackson County Department of Corrections, execution of which was suspended, and she was placed on probation for two years with special conditions, including payment of restitution in the amount of \$2,500 to the victim and performance of 40 hours of community service.

Conclusions of Law

We have jurisdiction to hear this case.⁷ The Director has the burden of proving that Morgan has committed an act for which the law allows discipline.⁸ The Director alleges that there is cause for discipline under § 590.080.1, which provides:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed.

The Director alleges that Morgan committed two criminal offenses on November 11, 2012: the crime of property damage pursuant to § 569.120 and the crime of trespass pursuant to § 569.140.

Section 569.120 defines the crime of second degree property damage:

1. A person commits the crime of property damage in the second degree if:

(1) He knowingly damages property of another[.]

* * *

2. Property damage in the second degree is a class B misdemeanor.⁹

⁷ Section 590.080.2.

⁸ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

⁹ We note that the threshold question separating second degree property damage from the Class D felony offense of first degree property damage is whether the value of the property destroyed exceeded \$750. Given that restitution was ordered in the amount of \$2,500, we find that the actual offense was more likely a felony.

Section 569.140¹⁰ defines the crime of first degree trespass:

1. A person commits the crime of trespass in the first degree if he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure or upon real property[.]

* * *

3. Trespass in the first degree is a class B misdemeanor.

Based on the pleadings and evidence, we know that Morgan committed the crime of property damage and that the damage was substantial. With respect to the crime of trespass, we have considered, among other things, the fact that Morgan did substantial damage to the structure to gain access to it and that she was licensed as a peace officer when she did so. We are convinced, based upon these circumstances, that Morgan could have had no reasonable belief that her conduct in entering the home of her victim was lawful. Morgan committed the criminal offenses of property damage and first degree trespass.

Summary

Morgan is subject to discipline under § 590.080.1(2). The hearing is cancelled.

SO ORDERED on April 15, 2015.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹⁰ RSMo 2000.