

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1328**

Megan Guetzkow, et al.,
Respondents,

vs.

Brian John Irgens (OID No. 247545),
Appellant,

and

all other persons unknown having or claiming an interest
in the property described in the Complaint herein,
Defendants.

**Filed May 2, 2022
Affirmed
Larkin, Judge**

Pope County District Court
File No. 61-CV-21-119

Gerald W. Von Korff, Rinke Noonan, Ltd., St. Cloud, Minnesota (for respondents)

John G. Westrick, Savage Westrick, P.L.L.P., Bloomington, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant judgment debtor challenges the district court's grant of summary
judgment to respondents judgment creditors in their declaratory-judgment action to

determine the validity of appellant's notice of homestead for property that he inherited but had never occupied. Because current or former occupancy is a requirement of Minnesota's homestead exemption, and it is undisputed that appellant had never occupied the subject property, we affirm.

FACTS

Respondents Megan Guetzkow, on behalf of her minor daughter E.I., and Mariah Guetzkow, have a judgment for damages in the amount of \$841,621.15 against appellant Brian Irgens.¹ The award of damages was based on Irgens's sexual abuse of the minor respondents. Irgens was criminally convicted for that sexual abuse and is currently serving a 144-month executed prison sentence, which began in 2015.

Irgens inherited 1.56 acres of real property in Pope County (the Property) while incarcerated.² On August 2, 2018, Irgens's attorney recorded a notice of homestead for the Property on his behalf. The notice asserted that

2. The [P]roperty is claimed by [Irgens] as [Irgens]'s dwelling place.

3. [Irgens] intends to occupy upon release from incarceration as his homestead.

4. [Irgens] claims that, to the extent permitted thereunder, the Property continues to be [Irgens]'s homestead under Minn. Stat. Ch. 510 even though [Irgens] is not occupying the [P]roperty.

¹ This court affirmed the award of damages. *Guetzkow v. Irgens*, No. A19-2075, 2020 WL 4743464, at *1 (Minn. App. Aug. 17, 2020), *rev. denied* (Minn. Oct. 28, 2020).

² Irgens inherited the Property upon his father's death in April 2018. A deed of distribution purportedly conveying the Property to Irgens was recorded in Pope County on June 27, 2019.

In a 2019 deposition, Irgens admitted that he had never lived at the Property, that he did not keep personal possessions at the Property, and that he did not claim the Property's address as his residence on his driver's license. He explained that he claimed the Property as his homestead because "[i]t was [his] preferred place of residence" after his release from prison.

Respondents initiated the underlying action in 2021, alleging that Irgens had wrongfully claimed the Property as his homestead and had "resisted collection efforts" on the judgment.³ Respondents sought a declaratory judgment that the 2018 notice of homestead was "fraudulently modified" and that the Property "does not qualify as a homestead." Respondents also sought to determine their adverse claim to the Property.

Respondents moved the district court for summary judgment. They included excerpts from Irgens's 2019 deposition testimony as evidence that Irgens had never occupied the Property. They also included a copy of a pro se motion to dismiss that Irgens mailed to respondents' attorney after receiving respondents' complaint.

The district court considered and denied Irgens's motion to dismiss. The district court granted respondents' motion for summary judgment, reasoning that Irgens could not claim a homestead exemption because he did not own the Property when he applied for the exemption and because he had never occupied the property.

Irgens retained counsel and sought permission to request reconsideration of the district court's grant of summary judgment, arguing that he became the owner of the

³ Collection efforts included docketing the judgment in Pope County with intent to execute a judgment lien on the Property and sell it at a sheriff's sale.

Property upon his father's death in April 2018. The district court denied the request for reconsideration, reasoning that "[e]ven if [Irgens] were the owner, it remains undisputed that [Irgens] never occupied the premises." Irgens appeals.

DECISION

A district court "shall grant summary judgment" if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. We review a grant of summary judgment de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010).

Minnesota statutes provide that a "house owned and occupied by a debtor as the debtor's dwelling place . . . shall constitute the homestead of such debtor . . . and be exempt from seizure or sale" Minn. Stat. § 510.01 (2020). It is established law that

the test to be used in determining whether the house is 'owned and occupied' by the debtor should be whether the ownership and occupancy affords a community connection of such significance as to give reason to believe that the preservation of that connection will in the long run make the debtor and his family better able to fulfill their social obligation to be self-sustaining.

Denzer v. Prendergast, 126 N.W.2d 440, 444 (Minn. 1964).

However, "actual residence upon the premises" is necessary to establish a homestead. *First Nat'l Bank of Mankato v. Wilson*, 47 N.W.2d 764, 767 (Minn. 1951). "It has never been supposed that a homestead could exist without actual occupancy." *In re Baillif's Est.*, 41 N.W. 1059, 1059 (Minn. 1889). The "test to be used in determining" whether a homestead exemption may be claimed presumes both "ownership and occupancy." *Denzer*, 126 N.W.2d at 444. Even though the occupancy requirement is given

a “reasonable construction,” “[a]ctual occupancy, as distinguished from mere possession . . . is the prominent idea associated” with a homestead. *Muscala v. Wirtjes*, 310 N.W.2d 696, 698 (Minn. 1981) (quoting *Clark v. Dewey*, 73 N.W. 639, 639-40 (Minn. 1898)).

The undisputed facts show that Irgens had never occupied the Property when he claimed the homestead exemption in 2018.⁴ Irgens was incarcerated at that time. Indeed, the notice of homestead states that Irgens claims the Property as his homestead “even though [Irgens] is not occupying the [P]roperty.” Moreover, Irgens admitted in deposition testimony that he had never resided at the Property, claimed it as his residence, or kept his personal possessions at the Property.

In *In re Est. of Bonde*, this court determined that a decedent did not establish “occupancy for purposes of homestead classification” and that the property at issue “should be classified as non-homestead.” 694 N.W.2d 74, 78 (Minn. App. 2005). This court reasoned that “the decedent had not resided in the . . . home for over twenty years, not even seasonally” and that “[a]side from a few furnishings,” the decedent “kept her personal effects” at another home “where she had lived . . . since 1978.” *Id.* Irgens’s claim to the

⁴ Although Irgens submitted an affidavit in district court stating, “I have resided, occupied, and used as a dwelling the [Property] in the past,” that statement is inconsistent with his deposition testimony that he had never resided at the property. Irgens’s affidavit did not attempt to explain that inconsistency. Nor did it provide any details regarding his alleged use of the Property as a dwelling. The district court correctly determined that Irgens’s statement regarding his use of the Property as a dwelling contradicted his deposition testimony and therefore could not create a genuine issue of material fact for the purpose of avoiding summary judgment. See *Banbury v. Omnitrition Int’l, Inc.*, 533 N.W.2d 876, 881 (Minn. App. 1995) (“A self-serving affidavit that contradicts earlier damaging deposition testimony is not sufficient to create a genuine issue of material fact.”). Irgens’s attorney does not rely on Irgens’s contradictory affidavit in this appeal or assign error to the district court’s rejection of it.

homestead exemption is weaker than the claim in *Bonde* because it is undisputed that Irgens has *never* resided at the Property.

Irgens argues that an incarcerated person should be allowed to claim a homestead exemption based on intent to occupy a property in the future, if the person is unable to establish occupancy due to incarceration. He relies on a statute that allows a property owner to preserve his existing homestead rights against a presumption of abandonment if the owner is absent from the property “for more than six consecutive months.” See Minn. Stat. § 510.07 (2020) (allowing an absent owner to “file with the county recorder of the county in which [the property] is situated a notice . . . describing the premises and claiming the same as the owner’s homestead). He also relies on caselaw stating that a person under a legal disability such as incarceration or involuntary commitment does not abandon his homestead for purposes of the abandonment statute. See *Eustice v. Jewison*, 413 N.W.2d 114, 118 (Minn. 1987) (holding that a decedent had not abandoned his homestead even though he had not lived there for eight years because he was under an involuntary commitment order and was not “free to return to his home”).

Irgens’s reliance on such law is unavailing. The abandonment statute presumes the prior establishment of a valid homestead, including occupancy. See Minn. Stat. § 510.07 (stating the statute applies if the owner “shall *cease to occupy*” their homestead (emphasis added)). Moreover, the issue of occupancy was not before the *Eustice* court; in that case, it was undisputed that the decedent had resided at the homestead property until his arrest and resulting involuntary commitment. 413 N.W.2d at 116. Here, it is undisputed that Irgens has *never* resided at the Property.

Irgens further argues that if he cannot claim the Property as his homestead, then “the sale . . . should at least be tolled until [he] has had the opportunity to actually occupy the premises.” We reject that proposition because it is inconsistent with the legislature’s policy decision that the homestead exemption—and its attendant protection from creditor claims—does not apply unless the debtor occupied the property. Allowing Irgens to claim the protection of the homestead exemption based on his intent to occupy the Property in the future, or allowing him to avoid debt collection efforts until he is able to occupy the Property, is inconsistent with Minnesota statutes and caselaw. *See Muscala*, 310 N.W.2d at 698 (holding that “[i]ntent does not grant a continuing exemption” from the homestead statutes). Such a policy change is for the legislature or Minnesota Supreme Court and not this court. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (“The function of the court of appeals is limited to identifying errors and then correcting them.”); *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (“[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.”), *rev. denied* (Minn. Dec. 18, 1987).

Finally, Irgens makes an argument that was not contained in his briefing. He argues that he has established occupancy because he keeps his personal possessions at the Property. As support, he notes that he inherited and now owns all of his father’s personal possessions, which are currently located on the Property.

Irgens’s argument that occupancy may be established based on the presence of his inherited personal property in a home where he has never resided is as novel as his assertion that occupancy may be established based on his intent to occupy the property in the future.

Recognition of a homestead exemption under these circumstances could be based only on a policy decision to extend the homestead exemption beyond currently established limits and to remove the occupancy requirement for incarcerated persons in certain circumstances. We are not at liberty to change existing law based on policy decisions. We therefore hold that Irgens is not entitled to claim a homestead exemption for the Property, and respondents are entitled to judgment as a matter of law.

Affirmed.