

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0659**

Amy R. Brosnahan, Kanabec County Attorney,
Appellant,

vs.

1572 Naples Street, Mora, MN, Kanabec County,
Respondent.

**Filed February 11, 2013
Reversed and remanded
Connolly, Judge**

Kanabec County District Court
File No. 33-CV-10-155

Barbara McFadden, Assistant Kanabec County Attorney, Mora, Minnesota (for appellant)

Beverly O. Dravis, Mora, Minnesota (pro se respondent)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and
Crippen, Judge.*

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant, a county attorney, brought a forfeiture action under Minn. Stat.
§ 609.5311, subd. 2(a) (2012) (providing that real property used in the manufacture of

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

controlled substances is subject to forfeiture). The action was dismissed on the ground that respondent property (the property) was subject to the homestead exemption provided by Minn. Stat. § 510.01 (2012). Appellant challenges the dismissal. Because the property was not the owner's homestead, either when the act leading to the forfeiture occurred or when the forfeiture action was brought, we reverse the dismissal and remand the matter back to the district court for trial.

FACTS

In May 2010, appellant Amy Brosnahan, the Kanabec County Attorney, filed a complaint seeking the forfeiture of residential non-homestead property owned by respondent Beverly Dravis and occupied by her son, Darin Anderson. The complaint alleged that Anderson had used the property to facilitate the manufacture of marijuana with Dravis's knowledge and consent, and it was therefore subject to forfeiture.¹

In a handwritten answer, Dravis stated that "[t]he illegal activity that took place at my farm was concealed from my knowledge." Later, through counsel, she filed a motion to dismiss the complaint on the ground that appellant had presented no facts showing that Dravis knew of the illegal activity.

In November 2011, Dravis began living at the property. Her counsel then moved to dismiss on the basis of the homestead exemption, arguing that "the house occupied by Dravis . . . is absolutely immune from this action." The county moved for a temporary injunction, ordering Dravis to either leave the property or provide security of \$114,000.

¹ The complaint also stated that another of Dravis's sons, Roger Anderson, is a co-owner of the property who knew of and consented to its use in the manufacture of marijuana. Roger Anderson takes no part in this appeal.

In January 2012, a hearing was held on these two motions. The district court noted that the hearing had been made “[p]ending a final evidentiary hearing on the [the county’s] forfeiture [action] and [Dravis’s] innocent owner defense.” The district court granted Dravis’s motion to dismiss based on the homestead exemption and declined to address the county’s motion for a temporary injunction.

The county challenges the dismissal, arguing that the homestead exemption does not apply to property used in the manufacture of a controlled substance when the owner does not begin living on the property until after a forfeiture action is brought. The county seeks reversal and a remand for litigation of its forfeiture action.

D E C I S I O N

This court reviews questions of law, including constitutional issues, de novo. *Torgelson v. Real Property Known as 17138 880th Ave., Renville County, 749 N.W.2d 24, 26* (Minn. 2008).

Torgelson holds that “the Minnesota Constitution’s homestead exemption, as implemented by Minn. Stat. § 510.01 (2006), exempts homestead property from forfeiture.” *Id.* at 25. In so holding, *Torgelson* reconciled a conflict between two statutes: Minn. Stat. § 609.5311, subd. 2 (a) (2012) (“*All property, real and personal, that has been used, or is intended for use, or has in any way facilitated, in whole or in part, the manufacturing . . . of contraband or a controlled substance . . . is subject to forfeiture under this section . . .*” (emphasis added)) and Minn. Stat. § 510.01 (2012) (“*The house owned and occupied by a debtor as the debtor’s dwelling place, together with the land upon which it is situated . . . shall constitute the homestead of such debtor . . . and be*

exempt from seizure . . . under legal process . . .” (emphasis added)). Concluding that “[t]he application of *Torgelson* to this case is dispositive,” the district court dismissed the forfeiture action.

But *Torgelson* is distinguishable because, in that case, “the parties agreed that the property was homestead property within the meaning of Minn. Stat. § 510.01.” 749 N.W.2d at 25. Here, the property was not Dravis’s homestead as defined in Minn. Stat. § 510.01 (*i.e.*, a “house owned and occupied . . . as the . . . dwelling place”) when the forfeiture summons and complaint were served because Dravis did not then occupy the house on the property as her dwelling place. Therefore, *Torgelson*’s holding that a homestead is not subject to forfeiture is irrelevant.²

By the time Dravis moved into the property, she had lost the right to do so. *See* Minn. Stat. § 609.531, subd. 5 (2012) (“All right, title, and interest in property subject to forfeiture under sections 609.531 to 609.5318 vests in the appropriate agency upon commission of the act . . . giving rise to the forfeiture.”) Because the property was used for the manufacture of marijuana before March 2010, the county’s right to it had vested long before Dravis moved there in November 2011. Dravis cannot invoke the homestead

² The district court also relied on *O’Brien v. Johnson*, 275 Minn. 305, 309, 148 N.W.2d 357, 360 (1967) (holding that a tortfeasor who owns multiple residential properties may shield any one such property from creditors by moving into it) to conclude that a non-resident owner of property used in the manufacture of a controlled substance may shield that property from forfeiture by moving into it. But *O’Brien* upholds the right of property owners to decide which one of their residential properties shall be exempt from creditors; it has no application in the context of property subject to forfeiture for the manufacture of controlled substances.

exemption because she was not occupying the property as her dwelling place when it became subject to forfeiture.

Moreover, preventing the seizure of property used in the manufacture of a controlled substance defeats a stated purpose of the forfeiture statute, i.e., reducing the economic incentive to engage in crime, because it provides an economic incentive for owners to permit illegal activity on non-occupied property if they can then avoid forfeiture by moving onto the property. *See* Minn. Stat. § 609.531, subd. 1a(3) (2012) (listing purpose of the forfeiture statute). Nor does preventing the forfeiture of property *not* used as the owner's homestead serve the purpose of the homestead exemption, i.e., "preserv[ing] the homestead as a dwelling for the debtor and his or her family." *Eustice v. Jewison*, 413 N.W.2d 114, 121 (Minn. 1987). An owner not occupying the property used for the manufacture of a controlled substance presumably has a homestead elsewhere, and that homestead is not threatened by the forfeiture.

Because the property was not the Dravis's homestead, either when the act leading to the forfeiture occurred or when the forfeiture action was brought, the homestead exemption does not apply. We reverse the district court's dismissal and remand for further proceedings in the forfeiture action, including but not limited to a trial where respondent may assert an innocent-owner defense.

Reversed and remanded.