JWT, L.P.,	)	
	)	Appeal No.
Appellee,	)	01A01-9904-CH-00209
	)	
v.	)	
	)	Davidson Chancery
PRINTERS PRESS, INCORPORATED and BRITAINS, INC.,	)	
	)	
	)	
Appellants,	)	

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CHANCERY COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

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REVERSED AND REMANDED

HERSCHEL P. FRANKS, JUDGE

CONCUR:
GODDARD, P.J.
SWINEY, J.

O P I N I O N

In this declaratory action over the validity of an easement, the Trial Judge ruled in plaintiff's favor, and counter-plaintiff has appealed.

Frank and Louise Becker owned property in Davidson County, which Louise had inherited from her brother, Frank Niederhauser. In 1969, Louise and Frank executed a power of attorney appointing their son Thomas Becker as their attorney-in-fact. Frank died in January of 1970, and Louise became the sole owner of the property.

The Metropolitan Planning Commission required the easement at issue as a condition to approving a subdivision known as Becker Commercial Subdivision. Thomas Becker recorded a plat with a note describing a forty-foot easement on one of the lots. The plat was recorded on February 26, 1970, and the easement provided ingress and egress for Lot 4 on the plat. Becker signed the owner's certificate, as "Exect. Est. Of Frank V. Niederhauser" and signed the easement note as "Exector [sic] with Power of Attorney."[1]

Louise Becker, by deeds dated May 13, 1971 and February 8, 1972, conveyed Lot 4 to Thomas A. Becker, Frank H. Becker and Donna Becker Holland. They then conveyed the property to defendant-appellant Printers Press, Inc., by deed dated May 19, 1989. Defendant-appellant Britains, inc., agreed to purchase the property by contract dated February 26, 1993.

Plaintiff-appellee JWT, L.P., owns adjoining property at 2010 Richard Jones Road. This property is designated as the servient estate for the forty-foot easement noted in the Becker commercial Subdivision plat. JWT purchased its property from Beckerland, a partnership in which Frank H. Becker, Donna Nagelson (formerly Holland) and the Becker Trust (a trust representing Thomas A. Becker's interest after his death).

In July 1998, JWT commenced an action in Chancery Court, seeking a declaration that the easement was void. JWT sought compensatory damages, and the

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1 The note on the face of the plat recites, permission is granted "for the record owner of Lot No. 4 as shown hereon to use any part or all of this easement for ingress and egress purposes only.

appellants answered the complaint and asserted a counterclaim, seeking a declaration that the easement was valid and for damages and injunctive relief.

After both parties had moved for summary judgment, the Trial Court ruled in favor of JWT, which then filed notice of voluntary dismissal on its claim for damages, and this appeal ensued.

When evaluating a motion for summary judgment, the Trial Court should consider "(1) whether a *factual* dispute exists; (2) whether the disputed fact is *material* to the outcome of the case; and (3) whether the disputed fact creates a *genuine* issue for trial." *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993). No presumption of correctness attaches to decisions granting summary judgment when they involve a question of law. *Hembree v. State*, 925 S.W.2d 513 (Tenn. 1996); Tenn.R.App.P. 13(d). The Court of Appeals must view the evidence in the light most favorable to the opponent of the motion and all legitimate conclusions of fact must be drawn in favor of the opponent. *Gray v. Amos*, 869 S.W.2d 925 (Tenn. App. 1993).

Assuming *arguendo* that the Trial Judge properly determined that Thomas Becker was not authorized to create the easement, and that Louise Becker could not ratify his conduct, the Court should have granted defendants summary judgment on this issue of estoppel by deed for reasons hereinafter discussed.

Appellants contend the plaintiff is estopped from denying the legitimacy of the easement. Estoppel by deed is "a bar which precludes one party to a deed an his privies from asserting as against the other party and his privies any right or title in derogation of the deed or from denying the truth of any material facts asserted in it." *Duke v. Hopper*. 486 S.W.2d 744, 748 (Tenn. App. 1972) (citations omitted). "[T]his estoppel works also against any party who is bound by what was known or should have been known from inquiry notice." *Blevins v. Johnson County*, 746 S.W.2d 678, 684 (Tenn. 1988). *Blevins* is instructive and held that a plaintiff was barred from contesting the truth of a recital in a deed from his predecessor-in-interest to the State. The plaintiff was barred both because the damages for which he sought to recover had already been contemplated and paid for in the prior deed, and

because he had "sufficient notice to be required to investigate the extent to which his rights in the land he lease and then purchased had been adversely affected. . ." *Id.* at 687.

In this case, all the parties' deeds refer to the plat. Although the appellants' deed does not specifically mention the easement, it specifically refers to the plat "for a more complete description." The appellee's deed specifically refers to the easement in the section describing permitted encumbrances, and the plat was recorded prior to these deeds. Accordingly, as the *Duke* court points out, appellee is estopped from "denying the truth of any material facts asserted" in the deeds.

Accordingly, we hold the appellee is estopped to deny the existence of the easement referred to in the deeds in the chain of title. We reverse the Trial Judge and remand for the entry of a judgment declaring the easement binding on the parties, and trial on the issues of injunctive relief and damages.

The cost of the appeal is assessed to appellee.

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Herschel P. Franks, J.

CONCUR:

_____
Houston M. Goddard, P.J.

_____
D. Michael Swiney, J.