

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 8, 2026 Session

FILED

09/23/2026

Clerk of the
Appellate Courts

**TERRI GANG v. DAVID GERREGANO, COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF REVENUE**

**Appeal from the Chancery Court for Davidson County
No. 22-1709-II(I) Patricia Head Moskal, Chancellor**

No. M2025-00854-COA-R3-CV

The Tennessee Department of Revenue audited a business's sales tax returns for a three-year period and then issued the business a proposed assessment for underreported and unpaid sales taxes. When the business failed to pay the tax assessment, the Department of Revenue issued letters of personal assessment to the owners of the business to hold them personally liable for the unpaid tax assessment pursuant to Tenn. Code Ann. § 67-1-1443(a). After an informal conference requested by the owners, the Department of Revenue affirmed the personal assessments. One of the owners then filed a complaint in chancery court to challenge the assessment. The Department of Revenue filed a countercomplaint, seeking to hold the owner personally liable for the business's tax assessment under Tenn. Code Ann. § 67-1-1443(a). The Department of Revenue filed a motion for summary judgment on its countercomplaint, which the chancery court granted. Discerning no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., C.J., and WILLIAM E. PHILLIPS II, J., joined.

Tyler H. DeWitt, Memphis, Tennessee, for the appellant, Terri Gang.

Jonathan Skrmetti, Attorney General and Reporter, J. Matthew Rice, Solicitor General, Jessica C. Simon, Assistant Attorney General, for the appellee, Commissioner of Revenue for the State of Tennessee.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

This appeal concerns unremitted state sales taxes. From 2015 until 2018, Terri Gang and her sister, Stephanie Appleton, jointly owned and operated a business known as Strikers Steakhouse, LLC (“Strikers”). Ms. Gang managed Strikers’ business operations and was responsible for the day-to-day tasks, including hiring, firing, and training staff. Both Ms. Gang and Ms. Appleton prepared and filed Strikers’ state sales tax returns.

The Tennessee Department of Revenue (“the Department”) conducted an audit of Strikers’ Tennessee sales tax returns for the years 2016 through 2018 and, on December 18, 2018, issued a notice of proposed assessment to Strikers in the amount of \$254,167.04 for underreported and unpaid sales taxes. Strikers did not challenge the assessment, which became final on or about January 18, 2019. Strikers entered into payment plans for the assessment but ultimately failed to pay the sales taxes owed. Therefore, on October 7, 2021, the Department issued personal assessment letters to Ms. Gang and Ms. Appleton holding them personally liable for Strikers’ unpaid tax assessment pursuant to Tenn. Code Ann. § 67-1-1443(a). As of the date of the letters, the total amount of tax, penalty, and interest owed was \$300,838.07.

Ms. Gang and Ms. Appleton requested an informal conference to dispute the assessments, arguing that (1) they were not personally subject to liability under Tenn. Code Ann. § 67-1-1443, (2) the personal assessments were untimely under Tenn. Code Ann. § 67-1-1501(b), and (3) the underlying assessment against Strikers was inaccurate. After conducting the informal conference, the Department issued decision letters to Ms. Appleton and Ms. Gang on September 9, 2022, and September 23, 2022, respectively. In the decision letters, the Department affirmed the personal assessments against Ms. Gang and Ms. Appleton and denied their requests for relief.

On December 22, 2022, Ms. Gang filed a complaint in the Davidson County Chancery Court challenging the Department’s personal assessment against her on the same grounds raised in the informal conference.¹ The Department filed an answer and counterclaim seeking to hold Ms. Gang personally liable for Strikers’ unpaid tax assessment and to recover attorney’s fees under Tenn. Code Ann. § 67-1-1803(d). Following discovery, the Department filed a motion for summary judgment, requesting a

¹ The complaint also included Ms. Appleton as a plaintiff. The personal tax assessment issued against Ms. Appleton, however, became final on September 9, 2022, when the Department issued the conference letter affirming the assessment against her. Because the complaint was not filed within ninety days of the September 9, 2022 letter, the court entered an agreed order dismissing her claims. *See* Tenn. Code Ann. § 67-1-1801(b)(1) (“A suit challenging the final assessment of a tax . . . must be . . . [f]iled within ninety (90) days from the date the assessment becomes final.”). Ms. Gang’s complaint challenging the final assessment against her was timely filed.

judgment in its favor on its counterclaim and the dismissal of Ms. Gang's claims. The trial court granted the Department's motion and found the Department to be the prevailing party for purposes of awarding attorney's fees pursuant to Tenn. Code Ann. § 67-1-1803(d).

Ms. Gang timely appealed and presents the following issue for our review: whether the trial court properly granted summary judgment to the Department.

STANDARD OF REVIEW

We review a trial court's summary judgment determination de novo, with no presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). This means that "we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Id.* We "must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor." *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002); *see also Acute Care Holdings, LLC v. Houston Cnty.*, No. M2018-01534-COA-R3-CV, 2019 WL 2337434, at *4 (Tenn. Ct. App. June 3, 2019).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." TENN. R. CIV. P. 56.04. A disputed fact is material if it is determinative of the claim or defense at issue in the motion. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008) (citing *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993)). When a party moves for summary judgment but does not have the burden of proof at trial, the moving party must submit evidence either "affirmatively negating an essential element of the nonmoving party's claim" or "demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense." *Rye*, 477 S.W.3d at 264. Once the moving party has satisfied this requirement, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleading." *Id.* at 265 (quoting TENN. R. CIV. P. 56.06). Rather, the nonmoving party must respond and produce affidavits, depositions, responses to interrogatories, or other discovery that "set forth specific facts showing that there is a genuine issue for trial." TENN. R. CIV. P. 56.06; *see also Rye*, 477 S.W.3d at 265. If the nonmoving party fails to respond in this way, "summary judgment, if appropriate, shall be entered against the [nonmoving] party." TENN. R. CIV. P. 56.06. If the moving party fails to show that he or she is entitled to summary judgment, however, "the non-movant's burden to produce either supporting affidavits or discovery materials is not triggered and the motion for summary judgment fails." *Martin*, 271 S.W.3d at 83 (quoting *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998)).

Determining whether summary judgment was appropriate in this case requires us to construe tax statutes. When construing statutes, our role "is to assign a statute the full effect

of the legislative intent without restricting or expanding its intended scope.” *Frazier v. State*, 495 S.W.3d 246, 248 (Tenn. 2016). We determine the legislature’s intent by “look[ing] first and foremost to the text of the statute because the statutory language is of primary importance.” *Flade v. City of Shelbyville*, 699 S.W.3d 272, 285 (Tenn. 2024). If a statute’s language is “clear and unambiguous, we derive the legislative intent from the plain meaning of the statutory language and simply enforce the statute as written.” *Id.* A statute imposing a tax must be strictly construed against the taxing authority and liberally construed in favor of the taxpayer. *Covington Pike Toyota, Inc. v. Cardwell*, 829 S.W.2d 132, 135 (Tenn. 1992). Statutory construction presents a question of law that we review de novo without a presumption of correctness. *State v. Welch*, 595 S.W.3d 615, 621 (Tenn. 2020).

ANALYSIS

I. Whether Ms. Gang is personally liable for Strikers’ unpaid tax liability

Taxes, like the sales taxes at issue here, where a third party collects the tax on behalf of the taxing entity are commonly referred to as “trust fund taxes.” *See Slodov v. United States*, 436 U.S. 238, 242-43 (1978). This is because these types of taxes are collected by a third party from customers and held in trust for the State until remitted. *In re King*, 117 B.R. 339, 341 (Bankr. W.D. Tenn. 1990). When a responsible person fails to remit the full amount of collected taxes to the State, the State may hold that individual personally liable for the unremitted portion of the tax if the requirements of Tenn. Code Ann. § 67-1-1443(a) are satisfied. Ms. Gang argues that the Department was not entitled to summary judgment on its counterclaim because the Department failed to establish that she was personally liable for Strikers’ unpaid sales taxes under Tenn. Code Ann. § 67-1-1443.

Tennessee Code Annotated section 67-1-1443(a) provides:

Any person required to collect, truthfully account for, and pay over any tax collected from customers of any taxpayer, who willfully fails to truthfully account for and pay over any such tax collected, or who willfully attempts in any manner to evade or defeat any such tax or the payment of those taxes shall, in addition to other penalties provided by law, be liable for the total amount of the tax evaded, or not accounted for and paid over, along with penalties and interest.

As used in this statute, the term “person” includes “an officer or employee of a corporation, who, as such officer or employee, is under a duty to perform the act with respect with which the violation occurs,” *Id.* § 67-1-1443(b)(1), and the term “willfully” is “limited to material and informed participation in the diversion of such collected funds to a source other than the state.” *Id.* § 67-1-1443(b)(2). There are no Tennessee cases construing these statutory requirements, but federal court decisions construing a similar statute, 26 U.S.C. § 6672,

offer persuasive support for the conclusion that “[l]iability attaches if an individual . . . [is] a ‘responsible person’ under the statute” who “‘willfully’ fail[ed] to pay over to the government the amount due.” *Gephart v. United States*, 818 F.2d 469, 473 (6th Cir. 1987) (citing *McGlothin v. United States*, 720 F.2d 6, 8 (6th Cir. 1983));² see also *In re Young*, 215 B.R. 366, 368-69 (Bankr. W.D. Tenn. 1997) (applying federal cases interpreting § 6672 to determine the meaning of Tenn. Code Ann. § 67-1-1443).

We adopt the test used by federal courts. Therefore, to determine Ms. Gang’s liability for these taxes, we must decide whether she meets these two requirements: (A) she is a responsible person, and (B) she willfully failed to pay over the amount due.

A. Whether Ms. Gang was a responsible person

The federal court decisions construing the similar federal statute have established a test for determining whether an individual is a “responsible person.” The test “is essentially a functional one, focusing upon the degree of influence and control which the person exercised over the financial affairs of the corporation and, specifically, disbursements of funds and the priority of payments to creditors.” *Gephart*, 818 F.2d at 473 (citing *United States v. Davidson*, 558 F. Supp. 1048, 1052 (W.D. Mich. 1983)).

Courts have relied on the following factors to determine whether an individual was a person responsible for the payment of a corporation’s taxes:

- (1) the duties of the officer as outlined by the corporate by-laws; (2) the ability of the individual to sign checks of the corporation; (3) the identity of the officers, directors, and shareholders of the corporation; (4) the identity of the individuals who hired and fired employees; (5) the identity of the individuals who were in control of the financial affairs of the corporation.

Id. (citing *Braden v. United States*, 318 F. Supp. 1189, 1194 (S.D. Ohio 1970)). As these factors demonstrate, liability under this test “is predicated upon the existence of significant, as opposed to absolute, control of the corporation’s finances.” *Id.* Stated another way, a responsible person “is one ‘with ultimate authority over expenditure of funds since such a person can fairly be responsible for the corporation’s failure to pay over its taxes,’ or more

² Pursuant to 26 U.S.C. § 6672,

“Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.”

Gephart, 818 F.2d at 471 (quoting 26 U.S.C. § 6672 (1987)).

explicitly, one who has ‘authority to direct payment of creditors.’” *Id.* (quoting *Barrett v. United States*, 580 F.2d 449, 452 (Ct. Cl.1978)).

Here, the undisputed facts show that Ms. Gang was an owner of Strikers’, designated herself as an authorized representative for the business, oversaw the business’s financial affairs, had the authority to sign checks and enter into agreements on behalf of the business, and was generally responsible for managing the business’s day-to-day operations, including the hiring, firing, and training of employees. Most significantly, she had authority to remit the sales tax collected by the business to the State, and she, along with Ms. Appleton, prepared Strikers’ state sales tax returns. This influence, control, and managerial authority that Ms. Gang had over Strikers’ operations shows that she was a responsible person under Tenn. Code Ann. § 67-1-1443.

B. Whether Ms. Gang willfully failed to remit the collected sales taxes

Regarding the second requirement of Tenn. Code Ann. § 67-1-1443(a), the undisputed facts show that both Ms. Gang and Ms. Appleton prepared the sales tax returns for Strikers. They both testified that the software system they used, Clover, generated the amount of sales tax that Strikers collected from customers, and Ms. Gang admitted that Strikers did not remit to the State the full amount of sales tax collected because she “did deductions” for “waste, loss, and uncompensated meals” before remitting the remaining balance to the State. Based on these undisputed facts, the trial court concluded that Ms. Gang willfully failed to collect and pay over the full amount of the sales tax collected by Strikers.

Ms. Gang contends that the trial court erred in determining this issue because the statute’s limitation of “willfully” to “material and informed participation in the diversion of such collected funds to a source other than to the state,” Tenn. Code Ann. § 67-1-1443(b)(2), required that the Department present proof of “deception, concealment, or deliberate misapplication of funds” to establish that she willfully failed to collect and pay over the full amount of the sales tax collected by Strikers. She insists that her actions reflected only “misunderstanding, not malfeasance,” because “[s]he believed—reasonably and in good faith—that deductions for waste, spillage, and employee meals were permissible deductions.” Essentially, her argument here is that personal liability cannot be imposed under Tenn. Code Ann. § 67-1-1443 for “mere oversight, negligence, or misunderstanding.”

First, we agree with the trial court’s determination that the plain language of the statute does not require that Ms. Gang was aware that her actions exposed either Strikers or herself to sales tax liability and penalties. All that is required by the plain language of the statute is that she engaged in the material and informed diversion of the sales tax collected by Strikers to a source other than the State, and the undisputed facts show that she did. Ms. Gang admitted that she knew that the amount of sales tax collected by Strikers

differed from the amount of tax remitted to the State because, when she prepared and filed the sales tax returns, Strikers retained a substantial portion of the taxes collected from customers.³

Second, although Ms. Gang is correct that federal courts have held that, for a failure to collect and pay over a tax to be willful, “[m]ore than mere negligence is required,” *Gephart*, 818 F.2d at 475 (quoting *Calderone v. United States*, 799 F.2d 254, 259-60 (6th Cir. 1986)), those courts have also held that willful conduct may include “a reckless disregard for obvious or known risks.” *Bolding v. United States*, 565 F.2d 663, 672 (Ct. Cl. 1977) (quoting *Monday v. United States*, 421 F.2d 1210, 1215 (7th Cir. 1970)). The undisputed facts of this case show that Ms. Gang’s conduct falls into the latter category. She testified that she made the various deductions from the sales tax collected by Strikers because she believed she could make those deductions even though she admitted that she had never examined any tax statutes or sought any tax advice to learn about her obligations on behalf of Strikers. Ms. Gang’s argument here amounts to the position that she should be immunized from the consequences of her actions because she wore blinders that shut out any knowledge of potential liability for the failure to remit the full amount of sales tax collected by the business. Such a deliberate or reckless disregard cannot shield a responsible person from personal liability for nonpayment of a tax under Tenn. Code Ann. § 67-1-1443.

In light of the foregoing, we conclude that the trial court properly determined that the Department met its burden of proof on its counterclaim that Ms. Gang was personally liable for Strikers’ unpaid sales taxes pursuant to Tenn. Code Ann. § 67-1-1443.

³ Ms. Gang argues that, “at minimum,” the “record contains genuine factual disputes as to [her] knowledge and intent,” because “[s]he testified she did not realize the deductions rendered the tax payments incomplete until *after* the assessment.” (Emphasis in original). Ms. Gang made this argument below and cited to the same testimony. The trial court reviewed the portions of the transcript from her deposition that were submitted with the motion for summary judgment and the opposition to summary judgment and concluded that Ms. Gang did not so testify:

For its last fact statement, the Department asserts that Gang “was aware the sales tax amount remitted to the Department on behalf of Strikers Steakhouse, LLC was less than what was collected from customers.”

Gang’s response is not responsive to the Department’s statement of fact and is not supported by the testimony she cites. Gang acknowledged in her deposition that Strikers did not remit to the State the full amount of taxes it collected “because [they] did deductions.”

The record contains additional testimony from Ms. Gang contradicting her assertion. Although she says that “[s]he denied knowingly remitting less than the amount collected,” she admitted that the numbers “weren’t always the same” when asked if she ever noticed that the amount of sales tax collected by Strikers was different from the amount remitted to the State. Ms. Gang’s argument here is unavailing.

II. Whether the Department timely collected against Ms. Gang

Ms. Gang insists that, even if the Department established that she was personally liable for Strikers' unpaid sales taxes under Tenn. Code Ann. § 67-1-1443, the Department's attempt to collect from her was time-barred. Her argument here focuses on the personal assessment the Department issued to her on October 7, 2021. According to Ms. Gang, this personal assessment letter constituted a "new assessment" that violated the requirement in Tenn. Code Ann. § 67-1-1501(b) that "the amount of any tax imposed . . . shall be assessed within three (3) years from December 31 of the year in which the return was filed." The Department argues, and the trial court agreed, that the personal assessment letter issued to Ms. Gang was not a new assessment of taxes, but rather a method to collect the taxes previously assessed against Strikers, which would be timely under the six-year limitation period for the collection of taxes under Tenn. Code Ann. § 67-1-1429.

Tennessee Code Annotated section 67-1-1429(a)(1) provides, in pertinent part, as follows:

Where the assessment of any tax imposed by this or any other title has been made within the applicable period of limitation, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun:

(A) Within six (6) years after the assessment of the tax becomes final

We decline to address whether the personal assessment letter issued to Ms. Gang was a timely and proper collection method under Tenn. Code Ann. § 67-1-1429 because, under the circumstances of this case, it is not necessary that we do so. The final assessment against Strikers became final on or about January 18, 2019. Four years later, on June 5, 2023, the Department filed its countercomplaint seeking to collect Strikers' tax liability that was imposed on Ms. Gang under Tenn. Code Ann. § 67-1-1443. The question then is whether the countercomplaint constituted a "proceeding in court" under Tenn. Code Ann. § 67-1-1429(a)(1)(A).⁴ This Court answered that question in *Bookstaff v. Gerregano*, 552 S.W.3d 216, 221 (Tenn. Ct. App. 2017), holding that, by filing a countercomplaint against the underlying business to collect the tax liability at issue, the Department had begun a "proceeding in court" to collect the tax liability at issue within the limitation period. Therefore, we conclude that the Department began a collection proceeding in court to hold Ms. Gang personally liable for the taxes assessed against Strikers within the six-year limitation period set forth in Tenn. Code Ann. § 67-1-1429(a)(1)(A). We affirm the trial court's decision to grant summary judgment to the Department.

⁴ The Department presented this argument in the trial court, but the court did not address it because the court concluded that the personal assessment was a timely collection effort. Nevertheless, this Court may affirm a trial court's judgment "on different grounds." *Afzali v. Etemadi*, No. M2019-01769-COA-R3-CV, 2020 WL 6158459, at *5 (Tenn. Ct. App. Oct. 21, 2020).

CONCLUSION

The judgment of the trial court is affirmed. Costs of this appeal are assessed against the appellant, Terri Gang, for which execution may issue if necessary.

/s/ Andy D. Bennett

ANDY D. BENNETT, JUDGE