In the Missouri Court of Appeals
Eastern District

DIVISION THREE

JEFFREY SPIEGEL, Appellant, vs. FERGUSON-FLORISSANT SCHOOL DISTRICT, Respondent.	)	No. ED109274 Appeal from the Circuit Court of St. Louis County Honorable David Lee Vincent FILED: May 25, 2021

Introduction

This appeal addresses the intersection of Section 432.070 and Section 169.590.3 of the Revised Statutes of Missouri[1] as they apply to school district contracts. Section 432.070 allows a school district to make contracts only within the scope of its powers or as expressly authorized by law. Section 169.590.3 prohibits a school district from paying the health insurance premiums for retired district employees who choose to retain their health insurance coverage through the school district. Jeffrey Spiegel ("Spiegel") appeals the trial court's dismissal of his petition for breach of contract against the Ferguson-Florissant School District (the "School District") relating to a negotiated provision in which the School District was obligated to provide and pay for lifetime health insurance benefits for Spiegel and his dependents (the "Provision"). The School

[1] All Section references are to RSMo (2016).

District maintains dismissal was proper because the Provision rendered the contract ("Contract") illegal in violation of Section 169.590.3 and was, therefore, beyond the School District's authority under Section 432.070. The School District further argues that neither Spiegel nor his Spouse ("Spouse," collectively the "Spiegels") are entitled to equitable remedies as a result of the School District's failure to pay for continued health insurance coverage as provided under the Contract.

We hold the Provision is subject to the express mandate of Section 169.590.3 which prohibits the School District from paying the health insurance premiums for retired School District employees. Because the Provision violates Section 169.590.3, the Contract is void and unenforceable under Section 432.070 and we must affirm the trial court's dismissal of Spiegel's breach-of-contract claim. Similarly, because the School District cannot be held liable on the equitable claims asserted by the Spiegel, we deny the remaining points of Spiegel's appeal and affirm the judgment of the trial court.

Factual and Procedural History

Since we are reviewing the trial court's dismissal of Spiegel's amended petition, we take as true the facts as alleged by Spiegel in the petition.

The School District is a public school district located within St. Louis County. Spiegel served as superintendent of the School District from 2004 to June 30, 2011. In the summer of 2009, Spiegel notified the School District that he planned to retire at the conclusion of the 2009–2010 school year. In an effort to retain Spiegel as superintendent through the 2010–2011 school year, the School District offered to increase his salary. When Spiegel declined that offer, the School District asked Spiegel what it would take for him to agree to remain as superintendent through the 2010–2011 school year. Spiegel responded that he would continue as the School

District's superintendent if the School District paid for health insurance coverage for him and his dependents for the remainder of their lives. The School District offered Spiegel a contract memorializing a provision to that effect. In April 2010, Spiegel and the School District entered into the Contract containing the following Provision under Benefits 8(B):

> Provided that [Spiegel] remains employed until June 30, 2011, the School District shall allow [Spiegel] to participate in the School District's group health plan for active employees for the remainder of his life to the same extent, except as noted below, that the participation is available for similarly situated active employees. Similarly, [Spiegel's] dependents shall be eligible to participate in the School District's group health plan for active employees to the same extent, except as noted below, that participation is available for dependents of similarly situated active employees. After June 30, 2011, neither [Spiegel] nor his dependents shall pay any premiums for any group health insurance coverage described in this paragraph. [Spiegel] and his dependents, as applicable, shall be responsible for any and all taxes associated with such coverage.

Spiegel served as superintendent as agreed through June 2011. Consistent with the Provision, the School District paid for the Spiegels' health insurance premiums from the date of Spiegel's retirement through November 2019, when Spiegel became eligible for Medicare. In his amended petition, Spiegel maintains that at no time after his retirement did he elect, or was asked by the School District to elect, to become or remain a member of any health plan offered by the School District.

In November 2019, the School District stopped paying Spiegel's health insurance premiums when Spiegel turned sixty-five and became eligible for Medicare. The School District then provided Spiegel the opportunity to participate in one of two Medicare supplement health plans: one plan administered by United Healthcare, which would cost Spiegel nothing, and the other plan administered by Monumental Life Insurance Co. ("Benistar"), which required monthly premium payments. Spiegel applied for coverage through United Healthcare, but was deemed ineligible. Spiegel then began making monthly insurance premium payments to both

Medicare and Benistar. The School District continued to pay the insurance premiums for Spouse through March 31, 2020. The School District stopped paying Spouse's monthly health insurance premium when Spouse turned sixty-five and became eligible for Medicare.

Spiegel brought this breach-of-contract action against the School District in January 2020. In his amended petition filed September 2020, Count I alleged the School District breached the Contract when it stopped paying for the cost of the Spiegels' health insurance consistent with the Provision. Count II sought specific performance of the Contract. Count III sought a declaratory judgment as to his rights, status, and/or the parties' legal relations under the Contract. Lastly, Count IV raised a claim of promissory estoppel, alleging the School District should be estopped from terminating payments of the Spiegels' health insurance premiums because Spiegel detrimentally relied on the promise of free lifetime health insurance and injustice resulted from the School District's failure to honor the Contract.

The School District moved to dismiss Spiegel's amended petition for failure to state a claim upon which relief could be granted. The School District reasoned that because Section 169.590.3 requires retired employees to pay their own health insurance premiums, the Provision obligating the School District to pay the Spiegels' health insurance premiums for the rest of their lives rendered the Contract invalid and unenforceable. The School District also argued that Section 432.070's limitations of the School District's powers to enter into contracts not expressly authorized by law barred Spiegel's claim for promissory estoppel.

The trial court held a hearing on the School District's motion to dismiss. Subsequently, the trial court granted the School District's motion and dismissed all four counts in Spiegel's petition, granting judgment to the School District. Spiegel now appeals.

Points on Appeal

Spiegel raises four points on appeal. Point One asserts the trial court erred in dismissing his petition because the prohibitory language of Section 169.590.3 applies only to retiree health insurance, whereas the Provision provides for active employee health insurance. Relatedly, Point Two contends the trial court thus erred in finding Section 432.070 required dismissal of his petition because the Contract did not exceed the School District's powers. Point Three argues the trial court erred in dismissing his claim for promissory estoppel due to the exceptional circumstances of the case. Point Four maintains the trial court erred in dismissing his claim for specific performance because not requiring the School District to perform its obligations under the Provision would harm the Spiegels, for whose benefit Section 169.590 was enacted.

Standard of Review

"We review de novo the grant of a motion to dismiss and the interpretation of the statute on which that dismissal was based." Epice Corp. v. Land Reutilization Auth. of City of St. Louis, 608 S.W.3d 725, 727 (Mo. App. E.D. 2020) (citing Miller v. Frank, 519 S.W.3d 472, 475 (Mo. App. E.D. 2017)); see also G.B. v. Crossroads Acad.-Cent. St., 618 S.W.3d 581, 588 (Mo. App. W.D. 2020) (citing D.E.G. v. Juv. Officer of Jackson Cnty., 601 S.W.3d 212, 216 (Mo. banc 2020)).

"In determining the appropriateness of the trial court's dismissal of a petition, an appellate court reviews the grounds raised in the defendant's motion to dismiss." Goldsby v. Lombardi, 559 S.W.3d 878, 881 (Mo. banc 2018) (internal quotation omitted). "A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition." Id. (internal quotation omitted). "When considering whether a petition fails to state a claim upon which relief can be granted, this Court must accept all properly pleaded facts as true,

giving the pleadings their broadest intendment, and construe all allegations favorably to the [petitioner]." G.B., 618 S.W.3d at 588 (quoting R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist., 568 S.W.3d 420, 424 (Mo. banc 2019)). However, "[c]onclusory allegations of fact and legal conclusions are not considered in determining whether a petition states a claim upon which relief can be granted." Willamette Indus., Inc. v. Clean Water Comm'n of State of Mo., 34 S.W.3d 197, 200 (Mo. App. W.D. 2000).

We will affirm a trial court's dismissal of a petition if it is correct on any ground raised in the motion to dismiss. Goldsby, 559 S.W.3d at 881 (internal quotation omitted).

Discussion[2]

I. Points One and Two—Applicability of Section 169.590.3 and Section 432.070

A. Section 169.590.3

In Points One and Two, Spiegel challenges the trial court's dismissal of the amended petition and its finding that the School District is required to pay for retiree health coverage under the Contract. Spiegel posits that the Provision obligates the School District to pay for ***active*** employee health insurance coverage for the remainder of the Spiegels' lives, not ***retiree***

[2] The School District requests we dismiss Spiegel's appeal for failure to preserve his points on appeal pursuant to Rule 84.04. We agree the points on appeal fail to comport with Rule 84.04(d), which requires an appellant adhere to the following format: "The trial court erred in [*identify the challenged ruling or action*], because [*state the legal reasons for the claim of reversible error*], in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error*]." Rule 84.04(d)(1). "Given that a template is specifically provided for in Rule 84.04(d)(1), appellants simply have no excuse for failing to submit adequate points relied on." Biggs by Next Friend Biggs v. Brinneman, 598 S.W.3d 697, 701 (Mo. App. S.D. 2020) (internal quotation omitted). Moreover, enforcement of Rule 84.04 is not merely a matter of hypertechnicality; rather, "[t]he genius of a Point Relied On is it forces the parties to make a specific point" and "[a]dherence to the rule serves to notify the opposing party of the precise matters under contention and inform the court of the issues presented for review." Kenneth Bell & NEZ, Inc. v. Baldwin Chevrolet Cadillac, Inc., 561 S.W.3d 469, 471 (Mo. App. S.D. 2018) (internal quotation omitted). Nevertheless, we "prefer[] to decide cases on the merits when possible and, despite an appellant's failure to comply with Rule 84.04, we may exercise our discretion to review an appeal ex gratia when the failure does not substantially prevent meaningful review." Carmen v. Olsen, 611 S.W.3d 368, 370 (Mo. App. E.D. 2020) (internal citation omitted). Here, although the points on appeal are deficient, we clearly ascertain Spiegel's arguments and choose to exercise our discretion to review the merits of the appeal. See id.; Biggs, 598 S.W.3d at 703 (internal quotation omitted) (cautioning that "[o]ur preference to resolve matters on the merits is not a license for non-compliance with Rule 84.04").

health insurance coverage. Hence, Spiegel argues, the Contract neither violates Section 169.590.3's prohibition on paying the health insurance premiums of retired employees nor exceeds the scope of the School District's powers under Section 432.070. The School District counters that it has only one health insurance plan, and does not offer separate health insurance plans for active employees and retired employees. The School District characterizes Spiegel's assertion that it maintains separate active and retiree health insurance plans, or that Section 169.590.3 makes such a distinction, as unfounded and merely conclusory.

"The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning." Howard v. City of Kan. City, 332 S.W.3d 772, 779 (Mo. banc 2011) (internal quotation omitted). We must construe the plain language enacted by the Missouri legislature. See id. "In construing a statute, courts cannot add statutory language where it does not exist; rather, courts must interpret the statutory language as written by the legislature." Peters v. Wady Indus., Inc., 489 S.W.3d 784, 792 (Mo. banc 2016) (internal quotation omitted). Similarly, "[t]he words of a contract are to be given their plain, ordinary meaning, and ambiguity arises only where the terms are reasonably open to more than one meaning, or the meaning of the language used is uncertain." Woods of Somerset, LLC v. Devs. Sur. & Indem. Co., 422 S.W.3d 330, 335 (Mo. App. W.D. 2013) (internal quotation omitted).

The controlling statute at issue in this appeal is Section 169.590. The plain language of Section 169.590 indicates its foremost objective was to require school districts to offer health insurance benefits to its retired employees at the same rate it offered health insurance to its active employees. However, when a retired employee becomes eligible for Medicare, the school district may offer reduced coverage. Section 169.590.1–2 (requiring any insurance offered to

retired employees permit "[a]ny employee who retires, or who has retired, and is receiving or is eligible to receive retirement benefits under this chapter to remain or become a member of the group, including a noninsurance health benefit program, and to receive benefits at the same rate as all other members of the group" and allowing "a different level of coverage . . . if such person is eligible for Medicare"); see St. Louis Police Officers' Ass'n v. Bd. of Police Comm'rs of City of St. Louis, 259 S.W.3d 526, 530 (Mo. banc 2008) (Breckenridge, J., concurring) (noting Section 169.590 shows the legislature is capable of writing a statute intending for retired employees to receive the same level of benefits as active employees). Section 169.590 applies to "[a]ny insurance contract or plan, including a noninsurance health benefit program, which provides group health insurance or benefits for employees who are members of any retirement system established pursuant to this chapter[.]" Section 169.590.1.

Key to our analysis of this appeal, Section 169.590.3 requires retired employees pay their own health insurance premiums: "[A] person electing to become ***or remain a member of a group*** [for health insurance benefits], including a noninsurance health benefit program, under subsection 1 of this section ***shall pay the premium for such coverage, including the premium for any covered dependents.***" Section 169.590.3 (emphasis added). Without question, the purpose of the Section 169.590 is to benefit retired employees by allowing them the option of continuing their health insurance coverage at the same cost as active employees, presumably a lower cost. But that purpose notwithstanding, the language of Section 169.590.3 unambiguously prohibits a public school district from paying the health insurance premiums of its retired employees. See id.[3]

[3] Although the parties dispute only the applicability of Section 169.590.3's mandate to the Contract and do not appear to specifically dispute that it prohibits a public school district from paying premiums for retired employees' health insurance plans, the School District directs our attention to a relevant opinion issued by the Missouri Attorney

B. Section 432.070

As noted above, the intersection of Sections 169.590.3 and 432.070 will guide our resolution of this appeal. Section 432.070 instructs that a public entity, like the School District, may enter into only those contracts which fall within the scope of its powers or are otherwise expressly authorized by law:

> *No* county, city, town, village, school township, ***school district*** or other municipal corporation ***shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law,*** nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing.

Section 432.070 (emphasis added).

Missouri law is clear in demanding that "[t]he requirements of Section 432.070 are mandatory, not discretionary[,]" and "[a] contract made in violation of Section 432.070 is void ab initio[.]" Rail Switching Servs., Inc. v. Marquis-Mo. Terminal, LLC, 533 S.W.3d 245, 262 (Mo. App. E.D. 2017) (internal citations omitted). Logically flowing from this recognized legal principle is that a contract deemed void under Section 432.070 is not enforceable against the public entity. Id. (internal citation omitted); The Lamar Co., LLC v. City of Columbia, 512 S.W.3d 774, 785 (Mo. App. W.D. 2016)

General on the question of whether a public school district that provides group health insurance for its employees may offer no-cost health insurance to retired employees and their dependents. The Attorney General opined:

> Subsection 3 of Section 169.590 specifically requires a retired employee of a school district or the surviving spouse or surviving children to pay the entire premium of the health insurance coverage provided in subsection 1. Thus, a school district cannot provide health insurance coverage to those persons at no charge to such persons.

Op. Mo. Att'y Gen. No. 45-88, at 3 (1988) (citing Section 169.590.3, RSMo (Supp. 1988)); see Stolov v. Jackson Cnty. Sch. Dist. C-1 of Hickman Mills, Jackson Cnty., 408 S.W.3d 218, 227 n.8 (Mo. App. W.D. 2013) (citing Gershman Inv. Corp. v. Danforth, 517 S.W.2d 33, 35 (Mo. banc 1974)) (noting that because the Attorney General is a member of the executive branch and lacks any judicial power to declare the law, opinions from the Attorney General may offer persuasive but not binding authority).

(internal citations omitted) ("Because [the city] had no authority to contract away future enforcement of its zoning ordinance against rebuilt or relocated billboards, the [contract] exceeded the scope of [the city's] powers in violation of [S]ection 432.070, and is void.").

We are poignantly mindful of the injustice that befalls the innocent party who in good faith enters into an agreement with a public entity only to have the public entity's obligations deemed void and unenforceable after the innocent party has fully performed its obligations under the agreement. Yet Missouri law sternly and unapologetically admonishes that "as illustrated in myriad cases, [Section] 432.070 can yield harsh results for litigants . . . who have served the public admirably and contributed to their communities in good faith." Ballman v. O'Fallon Fire Prot. Dist., 459 S.W.3d 465, 468 (Mo. App. E.D. 2015) (internal citation omitted). While "in a contractual dispute between private parties, the [C]ourt's paramount objective is to ascertain the intention of the parties and to give effect to that intention[,] . . . a public contract differs from a controversy between private citizens." Id. (internal quotations omitted). "[T]he purpose of Section 432.070 is to protect public entities[.]" Rail Switching Servs., Inc., 533 S.W.3d at 262 n.14 (internal citations omitted). "[T]he protection of the public and the declared public policy requires public officials to comply with mandatory statutory provisions." Ballman, 459 S.W.3d at 468 (internal quotation omitted). "Due to the fact that [public entities] represent the public, the courts unhesitatingly should enforce compliance with all mandatory provisions of the statutes intended to protect [the public]." Id. (internal quotation omitted); see also Rail Switching Servs., Inc., 533 S.W.3d at 262 (internal quotation omitted); Septagon Constr. Co. Inc.–Columbia v. Indus. Dev. Auth. of

City of Moberly, 521 S.W.3d 616, 626 (Mo. App. W.D. 2017). "Our application of well-established legal principles precludes us from recognizing the validity of an agreement entered into in violation of Section 432.070, despite the harshness that may result." Rail Switching Servs., Inc., 533 S.W.3d at 262 (citing Ballman, 459 S.W.3d at 468).

Here, if the Provision violates the express prohibition of Section 169.590.3, then the Contract is void and unenforceable under any remedy at law or in equity pursuant to Section 432.070, and the trial court properly dismissed the claims in Spiegel's amended petition. See id.; Ballman, 459 S.W.3d at 468.

C. Analysis of the Provision under Section 169.590.3

The relevant Provision in the Contract obligates the School District to pay the Spiegels' health insurance benefits for life. Specifically, the Provision states: "[T]he School District ***shall allow [Spiegel] to participate in the School District's group health plan for active employees for the remainder of his life*** to the same extent, except as noted below, that the participation is available for similarly situated active employees." (emphasis added). The Provision provides the same for Spiegel's dependents, namely Spouse. Further, the Provision states that ***"neither [Spiegel] nor his dependents shall pay any premiums for any group health insurance coverage described in this paragraph."*** (emphasis added). The parties do not dispute that Spiegel retired in June 2011, and that the School District paid the Spiegels' health insurance premiums for the School District's group health insurance plan following his retirement. The School District only stopped its payments for Spiegel when he turned sixty-five and became eligible for Medicare in November 2019, and similarly stopped its payments for Spouse when she turned sixty-five and became eligible for Medicare in March 2020.

Spiegel maintains the word "active" in the Provision is dispositive of the appeal. Spiegel argues that the Contract does not violate Section 169.590.3 because the Provision obligates the School District to pay "active" health insurance benefits for life and not "retiree" benefits. Spiegel reasons that because he and Spouse were participants in the active employee health insurance plan when he retired in June 2011, they continued to receive active employee health insurance benefits following his departure from the School District pursuant to the plain language of the Contract. Spiegel further argues that although he left the employ of the School District in June 2011, his leaving does not mean the School District thereafter provided him with retiree health insurance subject to the proscriptions of Section 169.590.3. Rather, the Contract stated Spiegel would receive active employee health insurance coverage and Spiegel posits that Section 169.590.3 does not prevent a school district from providing "active employee" coverage to an employee who retires as part of a bargained-for exchange such as here. Spiegel thus contends Section 169.590.3's prohibition against the School District paying retiree health insurance premiums is inapplicable and that the trial court erred in finding that the Contract was void and unenforceable. In contrast, the School District maintains that it does not offer separate health insurance plans for active employees and retired employees, but provides a single group health insurance plan made available to both active and retired employees.

The parties do not dispute that the Provision specifically was intended to obligate the School District to pay for the Spiegels' health insurance premiums after Spiegel left his employment with the School District. The semantics offered by Spiegel does not negate the plain and simple objective of the Provision and does not persuade us that the Contract complies with Section 169.590.3. The plain language of the Provision allows Spiegel "to participate in the School District's group health plan for active employees for the remainder of his life." Spiegel,

like any other employee who leaves the employ of the School District, was given the option to continue his health insurance benefits through the School District. But unlike any other employee who was required to pay the insurance premium, the School District agreed to pay the premiums for the Spiegels' health insurance after Spiegel's employment with the School District ceased. And therein lies the conflict with Section 169.590.3's mandate requiring retired employees who "elect[] to become or remain a member of a group [for health insurance benefits]" to pay their own health insurance premiums. See Woods of Somerset, LLC, 422 S.W.3d at 335 ("The words of a contract are to be given their plain, ordinary meaning."); Howard, 332 S.W.3d at 779 (internal quotation omitted) (noting we must "consider words used in the statute in their plain and ordinary meaning").

We are persuaded that the Provision allowing Spiegel to participate in the group health plan for active employees runs afoul of Section 169.590, which regulates ***both*** the benefits that a school district must confer on its retirees and what benefits a school district may never grant to retirees.[4] The School District's mandatory obligations are embodied in Section 169.590.1, which requires the School District grant retired employees access to the same group health insurance benefits as active employees—and most importantly, at the same rate. The prohibitions on the School District are expressed in Section 169.590.3, which precludes the School District from paying (or contracting to pay) for the health insurance premiums. We agree with the School District that neither the statute nor the Contract recognizes the existence of or establishes two different health insurance plans—one for active employees and one for retired

[4] We note that who is a "retiree" is a factual determination in case law. See Pub. Sch. Ret. Sys. of Missouri v. Taveau, 481 S.W.3d 10, 17–18 (Mo. App. W.D. 2015) (internal quotation omitted) (noting the following two-part test for whether an employee is a retiree: (1) "the person must, in fact, retire from full-time employment" and (2) if the retiree continues to maintain part-employment, "the retiree must establish compliance with the 550-hour rule" in Section 169.560). Further, given that no precedential authority holds that the language in an employment contract can determine an employee's retirement status under Section 169.560, it follows that no "active" versus "retiree" language in an employment contract can excuse compliance with the requirements of Section 169.590. See id.

employees. See Willamette Indus., Inc., 34 S.W.3d at 200 (noting that "[c]onclusory allegations of fact and legal conclusions are not considered in determining whether a petition states a claim upon which relief can be granted"). Rather, Section 169.590 merely requires that a school district provide retired employees with the same health insurance as active employees, until the retiree is eligible for Medicare, at which time the school district may offer reduced coverage. Importantly, the Contract provides benefits to Spiegel and his dependents far beyond their eligibility to participate in the same group health insurance plan available to active employees because the Contract guarantees lifetime health insurance coverage benefits in Spiegel's retirement at no cost to Spiegel or his dependents. The School District's promise that "neither [Spiegel] nor his dependents shall pay any premiums for any group health insurance coverage" violates the express mandate in Section 169.590.3 that the retired employee "shall pay the premium for such coverage, including the premium for any covered dependents." Section 169.590.3; See Woods of Somerset, LLC, 422 S.W.3d at 335; Howard, 332 S.W.3d at 779.

Spiegel next challenges the application of Section 169.590.3 to the Contract by claiming that he and Spouse never elected to receive health insurance coverage and therefore fall outside the strictures of Section 169.590.3. Spiegel notes that the statutory mandate requiring a retired employee pay his or her own health insurance premiums applies only to "[a] person electing to become or remain a member of a group [for health insurance benefits.]" Section 169.590.3. Spiegel alleges in his amended petition that he and Spouse never made any "election" to either become or remain a member of the group health insurance plan; rather, the Spiegels simply continued to receive active employee health insurance coverage. Again, the semantics offered by Spiegel does not salvage his amended petition. While Spiegel alleges he and Spouse never elected to remain a member of any healthcare plan offered by the School District, the amended

petition pleads facts that Spiegel not only negotiated for the Provision guaranteeing that both he and his dependents would remain insured under the healthcare plan offered by the School District, but accepted the benefits of the School District's group health insurance plan each year from June 2011 to November 2019. These pleaded facts in the amended petition clearly defeat Spiegel's conclusory allegation that he and Spouse did not elect to become or remain a member of a group for health insurance benefits. See Dunn Indus. Grp., Inc. v. City of Sugar Creek, 112 S.W.3d 421, 437 (Mo. banc 2003) (per curiam) (noting acceptance of benefits may preclude a party from challenging a provision or contract); see also Spurgeon v. Mo. Consol. Health Care Plan, 549 S.W.3d 465, 470–71 (Mo. App. W.D. 2018) (noting electing to continue health insurance coverage requires previously having coverage in the context of finding a retired employee's surviving spouse was not statutorily entitled to newly enroll in the state health insurance plan following the retired employee's death, given that the employee had declined coverage for the spouse who'd been otherwise insured). Regardless of how Spiegel chooses to characterize his actions, the facts averred in the amended petition show an election by the Spiegels to accept the benefits of paid healthcare premiums in his retirement, thereby making the benefits subject to Section 169.590.3's mandate.[5]

Spiegel next suggests that the Contract is not void, even if the Provision violates Section 169.590.3's mandate that the retired employee pay the health insurance premium. Specifically, Spiegel argues that because Section 169.590 prescribes no consequences for the School District's violation of the requirement that retired employees pay the health insurance premium, the

[5] The Contract does not specify what actions an employee must take to elect to remain insured. But the Spiegel's acts are consistent with those of any school district employee who desires to remain insured under the district's health insurance plan as opposed to seeking health insurance coverage outside the district. Any employee wanting to remain insured under the School District's plan must take some affirmative act to "elect" to remain insured. Spiegel did just that when he negotiated the Provision, entered into the Contract, and accepted the benefits of the Contract.

language of Section 169.590.3 is not mandatory, but directory. We find this argument unavailing.

"Generally the use of the word 'shall' connotes a mandatory duty." St. Louis Police Officers' Ass'n, 259 S.W.3d at 528 (quoting Bauer v. Transitional Sch. Dist. of City of St. Louis, 111 S.W.3d 405, 408 (Mo. banc 2003)) (interpreting a statute requiring that the police board "shall" provide health insurance to its active and retired officers to hold in the majority that the police board must pay the premiums of its retired officers to provide substantially the same level of benefits provided to active duty officers). Section 169.590.3 states that retired employees "shall pay the premium for such coverage, including the premium for any covered dependents." The use of the term "shall" is clear in the context of this statutory provision. Indeed, we are unable to attribute any other meaning other than a mandatory obligation to the word "shall" as used in Section 169.590.3. The fact that the School District contracted to pay the Spiegels' health insurance premiums for life violates that mandate. Further, Section 432.070 makes clear the consequences of the statutory violation: the contract is void and unenforceable. See Section 432.070; Rail Switching Servs., Inc., 533 S.W.3d at 262 (citing Ballman, 459 S.W.3d at 468).

Despite the harsh and unjust consequences to Spiegel, who alleges that he in good faith negotiated and entered into the Contract with the School District, the Contract is void and unenforceable because Section 432.070 allows the School District to enter into only those contracts falling within the scope of its powers or otherwise expressly authorized by law. See Section 432.070; Rail Switching Servs., Inc., 533 S.W.3d at 262 (citing Ballman, 459 S.W.3d at 468); The Lamar Co., LLC, 512 S.W.3d at 785. Because the Provision is not authorized by Section 169.590.3, the Contract is void and unenforceable under Section 432.070, and thus the trial court properly dismissed the claims in Spiegel's amended petition. See Rail Switching

Servs., Inc., 533 S.W.3d at 262 (citing Ballman, 459 S.W.3d at 468); The Lamar Co., LLC, 512 S.W.3d at 785; see also Goldsby, 559 S.W.3d at 881. Points One and Two are denied.

II. Points Three and Four—Equitable Remedies

Continuing his quest for fairness and relief under the Contract, Spiegel suggests theories of equitable relief to remediate the harshness of the principles that dictated the trial court's dismissal of the first amended petition. In Point Three, Spiegel offers the equitable principle of promissory estoppel. In Point Four, Spiegel presents the equitable theory of specific performance.

A. Point Three—Promissory Estoppel

In Point Three, Spiegel proposes that even if the Contract is void and unenforceable, then the trial court erred in denying him relief in the form of promissory estoppel due to exceptional circumstances.

To establish a claim for promissory estoppel, a party must establish four elements: "(1) a promise; (2) [the] promisee detrimentally relies on the promise; (3) [the] promisor could reasonably foresee the precise action the promisee took in reliance; and (4) injustice can only be avoided by enforcement of the promise." Spicer v. Spicer, 568 S.W.3d 480, 490 (Mo. App. E.D. 2019) (quoting Kearney Com. Bank v. Popejoy, 119 S.W.3d 143, 147 (Mo. App. W.D. 2003)). Even between private parties, "[w]e apply the doctrine of promissory estoppel cautiously and sparingly[.]" Id. at 490–91 (internal citation omitted).

While the equitable remedy of promissory estoppel is firmly established in Missouri jurisprudence, it also has been a long-settled principle in Missouri that public entities "cannot be made liable, either on the theory of estoppel or implied contract, by reason of the accepting and using of the benefits derived from void contracts." The Lamar Co., LLC, 512 S.W.3d at 792

(internal quotation omitted); see also Howard Cnty. Ambulance Dist. v. City of Fayette, 549 S.W.3d 1, 5 (Mo. App. W.D. 2018) (internal citations omitted). More simply stated, while the equitable remedy of promissory estoppel is a tool courts may use to remedy an injustice between privately contracting parties, promissory estoppel is not in the court's toolbox when a private party asks the court to apply the principle of promissory against a governmental entity for contracts that violate Section 432.070. See Howard Cnty. Ambulance Dist., 549 S.W.3d at 6 (citing The Lamar Co., LLC, 512 S.W.3d at 795). As our fellow justices in the Western District have held, "Section 432.070's purpose is to protect [public entities]. Thus, the provision has been interpreted by Missouri courts to preclude recovery against [public] entities on any theory of implied contract." Septagon Constr. Co. Inc., 521 S.W.3d at 626 (internal citations omitted); see also Epice Corp., 608 S.W.3d at 728 (internal citations omitted) (noting where a contract was void for failing to meet the written agreement requirement of Section 432.070 that "recovery is precluded on any theory of implied contract—such as unjust enrichment or quantum meruit—and any attempt to recover based on a theory of estoppel"). Further, "[t]he fact that a [public] entity has received the benefit of a plaintiff's performance does not make it liable on the theory of implied contract." Id. (internal citation omitted); see also Ballman, 459 S.W.3d at 467 (internal citation omitted) ("[E]quitable remedies such as estoppel are not available to overcome the requirements of [Section] 432.070, even where the [public] entity has received the benefit of the other party's performance."). Summarily, "there is no reasoned authority for the proposition that [the] doctrine of equitable estoppel can be employed to enforce a municipal contract that is void ab initio pursuant to [S]ection 432.070, even in the face of 'exceptional circumstances.'" Howard Cnty. Ambulance Dist., 549 S.W.3d at 6 (quoting The Lamar Co. LLC, 512 S.W.3d at 795).

Even where the contract at issue is not void ab initio, "[t]he 'doctrine of equitable estoppel is rarely applied in cases involving a governmental entity, and then only to avoid manifest injustice.'" Taveau, 481 S.W.3d at 23 (quoting Lalani v. Dir. of Revenue, 452 S.W.3d 147, 149 (Mo. banc 2014)). Further, none of the cases cited by Spiegel showed a private party asserting equitable estoppel against a public entity on the basis of a contract in violation of Section 432.070. See Muncy v. City of O'Fallon, 145 S.W.3d 870, 873 (Mo. App. E.D. 2004) (finding no exceptional circumstances existed where the city refused to return legal title of property to vendors following completion of a highway construction project on basis of a real estate contract void under Section 432.070); Watson v. City of St. Louis, 956 S.W.2d 920, 922 (Mo. App. E.D. 1997) (finding no exceptional circumstances existed where mobile home park tenants challenged the city's condemnation based on promises void under Section 432.070); see also Murrell v. Wolff, 408 S.W.2d 842, 851 (Mo. 1966) (not addressing any violation of Section 432.070 in finding exceptional circumstances justified applying equitable estoppel to prevent the enforcing a belatedly-enacted zoning ordinance). Rather, The Lamar Co., LLC specifically analyzed and rejected all of those prior cases in light of more recent Supreme Court rulings: "In short, there is no reasoned authority for the proposition that the doctrine of equitable estoppel can be employed to enforce a municipal contract that is void ab initio pursuant to section 432.070, even in the face of 'exceptional circumstances.' Though Muncy and Watson mistakenly stated to the contrary, they did so in error, and should not be cited for this proposition." The Lamar Co., LLC, 512 S.W.3d at 795–96 (internal citations omitted).

Missouri jurisprudence precludes Spiegel from holding the School District liable on its obligations emanating from a contract that is void under Section 432.070—either at law or under a theory of equitable relief, including promissory estoppel. See Howard Cnty. Ambulance Dist.,

549 S.W.3d at 6 (citing The Lamar Co., LLC, 512 S.W.3d at 795); see also Epice Corp., 608 S.W.3d at 728; Rail Switching Servs., Inc., 533 S.W.3d at 262 (citing Ballman, 459 S.W.3d at 468); Septagon Constr. Co. Inc., 521 S.W.3d at 626. As in Ballman, we are cognizant that strict application of Section 432.070 will at times yield harsh and unfair results. Yet this harshness must be balanced against the recognized purpose of Section 432.070, which is to protect the public interest. Until the Missouri legislature determines otherwise, we are duty bound to treat contracts between a governmental entity and a private party differently than a contract between private parties. See Ballman, 459 S.W.3d at 468 (internal citations omitted). We will strictly enforce compliance with all mandatory statutes where the purpose is to protect public entities and, in turn, the public itself. See id.; see also Epice Corp., 608 S.W.3d at 728; Howard Cnty. Ambulance Dist., 549 S.W.3d at 6; Rail Switching Servs., Inc., 533 S.W.3d at 262; The Lamar Co., LLC, 512 S.W.3d at 796. Accordingly, the trial court did not err in dismissing Count IV of Spiegel's amended petition. See Goldsby, 559 S.W.3d at 881. Point Three is denied.

B. Point Four—Specific Performance

In Point Four, Spiegel maintains that the harm caused to him and Spouse if the Contract is deemed void entitles him to seek specific performance of the Contract. Spiegel argues that when the trial court dismissed the amended petition, it committed error in refusing to recognize the School District's potential obligation to perform the promises made in the Contract. Spiegel reasons that the facts as pled in the amended petition support that application of the exception to the general rule against enforcing a void contract. This exception, as recognized in the Restatement (First) of Contracts ("Restatement"), states as follows: "If refusal to enforce or to rescind an illegal bargain would produce a harmful effect on parties for whose protection the law making the bargain illegal exists, enforcement or rescission, whichever is appropriate, is

allowed." Restatement, Section 601 (1932). Spiegel contends that even if Section 169.590.3 renders the Contract void, the Contract should still be enforced through specific performance because of the harmful effect voiding the Contract would have on the Spiegels, the parties for whom Section 169.590.3 was enacted to protect.

"Specific performance is purely an equitable remedy and must be governed by equitable principles." DiSalvo Props., LLC v. Hall, 616 S.W.3d 502, 510 (Mo. App. E.D. 2020) (internal quotation omitted). As explained in the previous section, Spiegel has identified no judicial authority wherein an individual was permitted to hold a public entity liable in equity on a contract void under Section 432.070. See Epice Corp., 608 S.W.3d at 728; Howard Cnty. Ambulance Dist., 549 S.W.3d at 6 (citing The Lamar Co., 512 S.W.3d at 795); Rail Switching Servs., Inc., 533 S.W.3d at 262 (citing Ballman, 459 S.W.3d at 468); Septagon Constr. Co. Inc., 521 S.W.3d at 626. Thus, we will not find the trial court erred in declining to apply the exception in the Restatement.

Additionally, we do not agree that the sole purpose of Section 169.590 is to benefit only retired employees. Section 169.590 is intended to protect not only retired employees, but governmental entities (including public school districts) as well. The minimum requirements for employer-offered health care plans for retired workers, when viewed in tandem with the express limitations placed on the payment of the premiums for such health care plans, illustrate the dual purpose of Section 169.590. See 169.590.1–3. Our understanding and acknowledgement of Spiegel's desire to receive the benefits of the Contract for which he bargained is tempered by the the School District's status as a public entity and our interpretation of the Contract and the relevant statutes. As previously noted, the facts as pleaded in the amended petition "preclude[] us from recognizing the validity of an agreement entered into in violation of Section 432.070,

despite the harshness that may result." Rail Switching Servs., Inc., 533 S.W.3d at 262 (citing Ballman, 459 S.W.3d at 468). Therefore, because the Provision makes the Contract void and unenforceable under the equitable theory of specific performance, the trial court did not err in dismissing Count II of Spiegel's amended petition. See id.; see also Goldsby, 559 S.W.3d at 881. Point Four is denied.

Conclusion

The judgment of the trial court is affirmed.

Kurt S. Odenwald

KURT S. ODENWALD, Judge

Angela T. Quigless, P.J., concurs.
James M. Dowd, J., concurs.