In the
Missouri Court of Appeals
Western District

TRAVIS POKE,	)	
	)	
Appellant,	)	**WD84198**
	)	
v.	)	**OPINION FILED: September 7, 2021**
	)	
INDEPENDENCE SCHOOL DISTRICT,	)	
	)	
	)	
Respondent.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Jennifer M. Phillips, Judge

Before Division Four: Cynthia L. Martin, Chief Judge, Presiding, Gary D. Witt, Judge and Roy L. Richter, Special Judge

Travis Poke ("Poke") appeals from the trial court's entry of summary judgment in favor of the Independence School District ("School District") on Poke's claim of retaliatory discharge pursuant to section 287.780[1] following Poke's exercise of rights under the Workers' Compensation Law.[2] Poke asserts that the trial court committed legal error when it concluded that the School District enjoys sovereign immunity from section

[1] All statutory references are to RSMo 2016, as supplemented through the date the School District terminated Poke's employment, unless otherwise indicated.

[2] Chapter 287.

287.780 claims of retaliatory discharge. Because the General Assembly expressly waived sovereign immunity for section 287.780 claims of retaliatory discharge, and because the exception to waiver of sovereign immunity described in section 105.850 does not apply to the School District, Poke's claim against the School District for retaliatory discharge is not barred by sovereign immunity. We reverse and remand.

Factual and Procedural Background[3]

Poke was employed by the School District as a custodian. On December 18, 2019, Poke injured his lower abdomen and groin while attempting to fold a cafeteria table. Poke worked through his pain for the next three days until a scheduled holiday break. When Poke returned to work on January 2, 2020, his pain had decreased, although he had a knot in his lower abdomen and groin. Over the next two weeks, Poke experienced intermittent pain that increased with activities.

On January 14, 2020, Poke lifted a full trash barrel liner at work, and then experienced intense pain and nausea, and had difficulty standing. Poke informed his supervisor that he needed to seek medical attention. A medical provider informed Poke that he may have suffered a hernia. Poke realized he sustained the hernia while attempting to fold the cafeteria table on December 18, 2019.

Poke initiated a workers' compensation claim with the School District on January 15, 2020. He was directed to the School District's authorized treatment provider, who diagnosed Poke with inguinal tenderness and directed Poke not to lift objects greater than

[3] When reviewing the entry of summary judgment, "[w]e view the record in the light most favorable to the party against whom the judgment was entered and accord the non-movant all reasonable inferences from the record." *Traweek v. Smith*, 607 S.W.3d 779, 784 (Mo. App. W.D. 2020).

ten pounds, not to engage in strenuous pulling or pushing, and not to bend or squat. Poke provided the School District's authorized treatment provider with a urine sample. Poke returned to work on January 16, 2020.

On January 27, 2020, the School District discharged Poke and provided him with a termination letter. The letter advised that Poke had been terminated for violating the School District's policy that "any District employees under the influence of drugs or controlled substances while on duty are subject to disciplinary action, up to and including termination." According to the termination letter, Poke's urine sample tested positive for marijuana. The School District relied on the positive drug test to deny Poke's workers' compensation claim.

On February 28, 2020, Poke filed a petition ("Petition") against the School District that alleged the stated basis for his termination was pretextual, and that he was actually terminated in retaliation for exercising his rights under the Workers' Compensation Law. Poke's Petition asserted that "[t]he actions of [the School District], including [Poke's] discharge from employment and denial of [Poke's] previously accepted workers' compensation claim, were acts of retaliation, in violation of [section] 287.780."

The School District filed an answer ("Answer") to the Petition and denied that Poke was discharged in retaliation for filing a workers' compensation claim. The Answer also asserted that "[Poke's] claim[is] barred by the doctrines of governmental, sovereign, and/or Eleventh Amendment immunity."

The School District filed a motion for summary judgment ("Motion for Summary Judgment") on July 29, 2020. The School District's statement of uncontroverted facts

alleged: (1) that "[Poke's] claims are based upon events occurring between December 2019 and January 2020"; (2) that "[t]he [School] District maintained a single liability insurance policy . . . potentially providing coverage in this case"; and (3) that the liability insurance policy contains a provision that preserves the School District's sovereign immunity as provided by law. The Motion for Summary Judgment argued that settled decisional law establishes that public entities like the School District are entitled to sovereign immunity from section 287.780 retaliatory discharge claims.[4] The Motion for Summary Judgment thus argued that even though the School District had acquired liability insurance,[5] the policy's exclusion of coverage to the extent of the School District's sovereign immunity was controlling, and required the entry of judgment in favor of the School District as a matter of law.

Poke's suggestions in opposition to the Motion for Summary Judgment admitted each of the School District's uncontroverted facts. Poke argued, however, that the uncontroverted facts did not entitle the School District to judgment as a matter of law. Poke argued that the General Assembly expressly waived sovereign immunity for section 287.780 retaliatory discharge claims by including governmental bodies within the definition of "employer" applicable to Chapter 287. Poke further argued that Missouri

[4]Although the School District asserted sovereign immunity as an affirmative defense in its Answer, sovereign immunity is not an affirmative defense but is instead a part of the plaintiff's *prima facie* case, such that Poke had an obligation to plead specific facts in his Petition supporting a waiver of, or an exception to, sovereign immunity. *State ex rel. City of Kansas City v. Harrell*, 575 S.W.3d 489, 492 (Mo. App. W.D. 2019). The School District did not file a motion to dismiss Poke's Petition for failure to state a claim, and its Motion for Summary Judgment did not argue that Poke failed to plead a waiver of, or an exception to, sovereign immunity.

[5]A public entity's purchase of liability insurance generally waives sovereign immunity to the extent of the coverage provided by the policy. *See* section 537.610.1.

cases holding that sovereign immunity is not waived by section 287.780 rely on section 105.850 to reach that conclusion, and have been wrongly decided.

The trial court issued a judgment and order granting the School District's Motion for Summary Judgment ("Judgment") on November 12, 2020. The Judgment concluded that, pursuant to *Krasney v. Curators of University of Missouri*, 765 S.W.2d 646, 648 (Mo. App. W.D. 1989), and *King v. Probate Division, Circuit Court of County of St. Louis, 21st Judicial Circuit*, 958 S.W.2d 92, 93 (Mo. App. E.D. 1997), the School District enjoyed sovereign immunity with respect to Poke's section 287.780 claim for retaliatory discharge. The Judgment further found that the School District's purchase of a liability insurance policy did not waive sovereign immunity, as the policy provided that coverage would not extend to claims that would have been barred by sovereign immunity but for the existence of the policy.

Poke appeals.

Standard of Review

"We review the grant of summary judgment *de novo*." *Estes as Next Friend for Doe v. Bd. of Trs. of Mo. Pub. Entity Risk Mgmt. Fund*, 623 S.W.3d 678, 686 (Mo. App. W.D. 2021) (quoting *In re Annaliese Brightwell Tr.*, 605 S.W.3d 143, 145 (Mo. App. W.D. 2020)). Summary judgment is appropriate if there is no genuine issue as to any material fact, and where the uncontroverted facts entitle the moving party to judgment as a matter of law. *Id.* Where, as here, the movant is the defendant, summary judgment is appropriate when the movant establishes one of the following:

> (1) facts negating any one of the claimant's elements necessary for judgment; (2) that the claimant, after an adequate period of discovery, has not been able to--and will not be able to--produce evidence sufficient to allow the trier of fact to find the existence of one of the claimant's elements; or (3) facts necessary to support his properly pleaded affirmative defense.

Scholdberg v. Scholdberg, 578 S.W.3d 831, 834-35 (Mo. App. W.D. 2019) (quoting *Love v. Waring*, 560 S.W.3d 614, 618-19 (Mo. App. W.D. 2018)).

In determining whether the trial court's entry of summary judgment was appropriate, we treat the School District's statement of uncontroverted facts as true unless properly controverted by Poke. *Id.* at 834. Poke admitted each of the School District's uncontroverted facts. Thus, we must determine whether the uncontroverted facts supported the entry of judgment in favor of the School District as a matter of law. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 380 (Mo. banc 1993) ("The key to summary judgment is the undisputed right to judgment as a matter of law; not simply the absence of a fact question.").

Analysis

Poke asserts in a single point on appeal that the trial court erred as a matter of law when it entered summary judgment in favor of the School District on the basis of sovereign immunity. Poke claims that the General Assembly's inclusion of the state and its political subdivisions in the definition of "employer" for purposes of Chapter 287 constituted an express waiver of sovereign immunity for section 287.780 retaliatory discharge claims asserted against an employer. Poke argues that Missouri cases holding

to the contrary in reliance on section 105.850, an antiquated statute, were wrongly decided, and should be disregarded.[6]

The School District concedes that it falls within the definition of "employer" for purposes of Chapter 287, but argues that section 105.850 has been repeatedly construed to retain the protection of sovereign immunity for section 287.780 claims of retaliatory discharge. The School District thus argues that settled precedent requires us to affirm the trial court's Judgment.

The trial court's Judgment expressly relied on the holdings in *Krasney* and *King* to conclude that the School District enjoys sovereign immunity from section 287.780 retaliatory discharge claims. *Krasney* and *King* both hold that, to the extent applicable, section 105.850 preserves sovereign immunity for tort claims arising under the Workers' Compensation Law, including claims pursuant to section 287.780. Relying on *Krasney* and *King*, the trial court reached the same conclusion, though the Judgment does not expressly refer to section 105.850. We must determine whether the trial court's legal conclusion was correct, notwithstanding the absence of uncontroverted facts. *ITT Com. Fin. Corp,* 854 S.W.2d at 380.

Section 105.850 does not apply to the School District and does not operate to preserve the School District's sovereign immunity from section 287.780 retaliatory discharge claims

[6]Poke does not challenge the Judgment's conclusion that the School District's purchase of liability insurance did not waive sovereign immunity for section 287.780 retaliatory discharge claims. However, because that conclusion is inherently dependent upon the trial court's conclusion that the School District enjoys sovereign immunity from section 287.780 retaliatory discharge claims, Poke's failure to challenge the Judgment's conclusion regarding the effect of acquiring liability insurance is not fatal to Poke's appeal. *Cf. STRCUE, Inc. v. Potts*, 386 S.W.3d 214, 219 (Mo. App. W.D. 2012) (holding that an appellant's failure to challenge each ruling that could support affirming a trial court's judgment is fatal to appeal).

Section 537.600 addresses sovereign immunity, and provides, in relevant part:

> Such sovereign or governmental tort immunity as existed at common law in this state prior to September 12, 1977,[7] except to the extent waived, abrogated or modified by statutes in effect prior to that date, shall remain in full force and effect; except that, the immunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances: (1) [injuries arising out of the negligent operation of a motor vehicle by a public employee within the course of his or her employment]; [and] (2) [injuries caused by the dangerous condition of a public entity's property].

Section 537.600.1. "Unless [sovereign immunity] is waived or a statutory or recognized common law exception . . . is applicable, sovereign immunity applies" to protect a public entity from suit for liability in tort. *Metro. St. Louis Sewer Dist. v. City of Bellefontaine Neighbors*, 476 S.W.3d 913, 914 (Mo. banc 2016); *see also Wyman v. Mo. Dep't of Mental Health*, 376 S.W.3d 16, 19 (Mo. App. W.D. 2012) ("[A] public entity with the status of a governmental body . . . is immune from suit for liability in tort in the absence of an express statutory provision. Liability of a political subdivision for torts is the exception to the general rule of sovereign immunity . . . ." (quoting *Langley v. Curators of Univ. of Mo.*, 73 S.W.3d 808, 811 (Mo. App. W.D. 2002))). It is settled law that school districts are public entities that enjoy sovereign immunity except where waived. *See, e.g.*, *Doe as Next Friend of Doe Minor v. Garagnani*, 614 S.W.3d 556, 559 (Mo. App. S.D. 2020).

The decision to waive sovereign immunity, and the extent to which immunity is waived, is within the General Assembly's purview. *Murray v. Mo. Highway & Transp.*

[7]September 12, 1977, is the date that the Supreme Court of Missouri abolished sovereign immunity in *Jones v. State Highway Commission*, 557 S.W.2d 225 (Mo. banc 1977). *Estes as Next Friend for Doe*, 623 S.W.3d at 689. The General Assembly restored sovereign immunity by enacting sections 537.600 through 537.650. *Id.*

Comm'n, 37 S.W.3d 228, 235 (Mo. banc 2001). Thus, through the enactment of a statute, the General Assembly may waive sovereign immunity as it sees fit. *Id.*

Chapter 287 addresses the duties and obligations of employers with respect to workers' compensation claims. Section 287.030.1 defines the word "employer" for purposes of Chapter 287 "to mean: . . . (2) The state, county, municipal corporation, township, school or road, drainage, swamp and levee districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation or quasi-corporation, or cities under special charter, or under the commission form of government." Before 1974, the definition of "employer" in section 287.030.1(2) included a similar list of governmental bodies, but provided that identified governmental bodies were not bound by the provisions of Chapter 287 ***unless*** the entity "elects to accept [Chapter 287] by law or ordinance." *See, e.g.*, section 287.030.1(2), RSMo 1969.

In 1969, at a time when submission to the Workers' Compensation Law remained subject to a governmental body's election "by law or ordinance," the General Assembly enacted sections 105.800 through 105.850 to make the provisions of Chapter 287 applicable to all "state employees." *See* sections 105.810 & 105.800 RSMo 1969. "State employee" was defined as follows:

> As used in sections 105.800 to 105.850, the term "state employee" means any person who is an elected or appointed official of the state of Missouri or who is employed ***by the state*** and earns a salary or wage in a position normally requiring the actual performance by him of duties ***on behalf of the state***.

Section 105.800, RSMo 1969 (emphasis added). Of particular relevance to this case, section 105.850 provides:

> Nothing in sections 105.800 to 105.850 shall ever be construed as acknowledging or creating any liability in tort or as incurring other obligations or duties except only the duty and obligation of complying with the provisions of chapter 287.

In 1974, section 287.030.1(2) was amended to delete the provision which made acceptance of Chapter 287 elective for governmental bodies listed in the definition of "employer." Section 287.030.1(2), RSMo Supp. 1975. After this amendment, all governmental bodies identified in section 287.030.1(2) were "employers" bound to provide workers' compensation coverage pursuant to the provisions of Chapter 287. *Id.* The practical effect of the 1974 amendment to section 287.030.1(2) was to eliminate the need for sections 105.800 through 105.850, at least insofar as those sections extended the mandate of workers' compensation coverage to "state employees." However, sections 105.800 through 105.850 have never been repealed.

Section 287.780 provides:

> ***No employer*** or agent shall discharge or discriminate against any employee for exercising any of his or her rights under this chapter when the exercising of such rights is the motivating factor in the discharge or discrimination. ***Any employee who has been discharged or discriminated against in such manner shall have a civil action for damages against his or her employer.*** For purposes of this section, "motivating factor" shall mean that the employee's exercise of his or her rights under this chapter actually played a role in the discharge or discrimination and had a determinative influence on the discharge or discrimination.

(Emphasis added.) Before 1973, section 287.780 provided that an employer's discharge of, or discrimination against, an employee for exercising rights under Chapter 287

constituted a criminal misdemeanor. *See* section 287.780 RSMo 1969. In 1973 section 287.780 was amended to convert an employer's discharge of, or discrimination against, an employee for exercising rights under Chapter 287 from a criminal misdemeanor to a private right of action for damages. Section 287.780 RSMo Cum. Supp. 1973. The effect of this amendment was to "create[] a judicially cognizable independent tort" for retaliatory discharge. *Cook v. Hussmann Corp.*, 852 S.W.2d 342, 344 (Mo. banc 1993). The 1973 amendment to section 287.780 occurred one year before the General Assembly amended section 287.030.1(2) in 1974 to delete the language which made submission to the Workers' Compensation Law elective for governmental bodies.

The plain language of section 287.780 prohibits ***all*** "employers" from engaging in retaliatory conduct, and creates a civil action for damages against all "employers" who ignore this prohibition. Poke argues that section 287.780's application to all employers, and section 287.030.1(2)'s definition of "employer," combine to reflect the General Assembly's express waiver of sovereign immunity for claims of retaliatory discharge. Poke further argues that the sequencing of the enactment of sections 105.800 through 105.850 in 1969, and of the amendments to section 287.780 and section 287.030.1(2) in 1973 and 1974, signal the General Assembly's intent to disregard section 105.850's retention of sovereign immunity for tort claims arising pursuant to the Workers' Compensation Law, notwithstanding that section 105.850 has never been repealed.

The School District does not contest that it is an "employer" as defined by section 287.030.1(2), and that it is bound to act in accordance with the duties and obligations imposed by the provisions of Chapter 287. However, the School District contends that it

is nonetheless immune from civil liability for the "independent tort" of retaliatory discharge created by section 287.780 because that section must be read with section 105.850, which states that sections 105.800 to 105.850 are never to be construed as acknowledging or creating any liability in tort under Chapter 287. The School District notes that four Missouri cases have so held, and thus argues that section 105.850 prohibits construing section 287.780 as expressly waiving sovereign immunity.

The effect of section 105.850 on civil liability imposed by section 287.780 was first addressed in *Krasney v. Curators of University of Missouri*, where we held that section 105.850 applies to require the conclusion "that, any intimations to the contrary notwithstanding, none of the provisions of the Workers['] Compensation Law shall be construed as a waiver of sovereign immunity in favor of a ***state*** employee." 765 S.W.2d at 650 (emphasis added.) Relying on *Krasney*, the Eastern District similarly held in *King v. Probate Division, Circuit Court of County of St. Louis, 21st Judicial Circuit*, that under section 105.850, "the ***state*** has the duty and obligation to comply with the provisions of Chapter 287, but has not waived tort liability in connection therewith" by virtue of the plain language of section 105.850. 958 S.W.2d at 93 (emphasis added). We reaffirmed the holdings in *Krasney* and *King* in *Wyman v. Missouri Department of Mental Health*, where we concluded that section 105.850 "preserv[es] the ***State's*** sovereign immunity against tort claims, including tort claims for retaliatory discharge based on [section] 287.780," despite the 2005 amendments to the Workers' Compensation Law, and the

proviso of section 287.800 requiring strict construction.[8] 376 S.W.3d at 22 (emphasis added.) Most recently, the Eastern District rejected an invitation to conclude that *Krasney*, *King*, and *Wyman* were wrongly decided when it held that "the Board of Curators is a state employer," and that "sections 105.800 to 105.850 address the applicability of chapter 287 to *state* employees and employers." *Wille v. Curators of Univ. of Mo.*, No. ED109082, 2021 WL 1097876, at *4, *6 (Mo. App. E.D. Mar. 23, 2021).[9]

As was urged and rejected in *Wyman* and *Wille*, Poke argued before the trial court, and again argues here, that *Krasney* and its progeny were wrongly decided. We need not address that broad contention, however, as each case addresses the effect of section 105.850 on the ***state's*** civil liability in tort pursuant to section 287.780.[10] That is consistent with the fact that although section 105.850 does not mention the state, or state employees, it is to be read *in pari materia* with sections 105.800 through 105.840, since each provision was enacted at the same time, and for the noted purpose of requiring ***state*** employers to extend workers' compensation coverage to ***state*** employees, as defined by

[8]Not relevant to this case is the additional holding in *Wyman* that the State's sovereign immunity does not necessarily bar a retaliatory discharge claim for "injunctive relief which seeks to reverse a state agency's prior violation of its statutory obligations, or to prevent future violations." 376 S.W.3d at 23.

[9]When the instant appeal was submitted following oral argument, our Supreme Court had before it the employee's pending application for transfer in *Wille*, case number SC99110. On August 31, 2021, the Court denied that application for transfer so that the Eastern District's opinion in *Wille* is now final.

[10]In *Krasney*, *King*, *Wyman*, and *Wille* the employee claimant was employed by the state to perform duties on behalf of the state, and was thus a "state employee" as defined by section 105.800. *See Krasney*, 765 S.W.2d at 648 (plaintiff was a librarian employed by the Curators of the University of Missouri, an entity through which the State of Missouri functions to govern the University of Missouri system, as held by *Tribune Publishing Co. v. Curators of University of Missouri*, 661 S.W.2d 575, 584 (Mo. App. W.D. 1983)); *King*, 958 S.W.2d at 92 (plaintiff was an auditor employed by the Probate Division of the Circuit Court of the County of Saint Louis, a state employer for workers' compensation purposes pursuant to *Smith v. Thirty-Seventh Judicial Circuit of Missouri*, 847 S.W.2d 755, 758 (Mo. banc 1993)); *Wyman*, 379 S.W.3d at 18 (plaintiffs were sixteen former or current employees of the Fulton State Hospital, operated by the Missouri Department of Mental Health, an agency of the state); *Wille*, 2021 WL 1097876, at *1, *4 (plaintiff was the project director employed by the Curators of the University of Missouri, and "the Board of Curators is a state employer").

section 105.800. *See State ex rel. Evans v. Brown Builders Elec. Co.*, 254 S.W.3d 31, 35 (Mo. banc 2008) ("In determining the intent and meaning of statutory language, the words must be considered in context and sections of the statutes *in pari materia*, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words." (internal quotation marks omitted))). As a matter of law, section 105.850's restraint on the civil liability otherwise imposed on all employers by section 287.780 is limited to situations where the state is the employer, and a state employee (as defined by section 105.800) is the workers' compensation claimant. *See Treasurer of State v. Parker*, 622 S.W.3d 178, 181 (Mo. banc 2021) (noting that we must ascertain the intent of the General Assembly by considering the plain and ordinary language of statutes and then giving effect to that intent if possible).

A school district is a political subdivision of the state. *Hughes v. Civil Serv. Comm'n*, 537 S.W.2d 814, 815 (Mo. App. 1976) ("School districts are political subdivisions of the state . . . ."). Section 70.210(3) defines a "political subdivision" as:

> [C]ounties, townships, cities, towns, villages, school, county library, city library, city-county library, road, drainage, sewer, levee and fire districts, soil and water conservation districts, watershed subdistricts, county hospitals, any board of control of an art museum, any 911 or emergency services board authorized in chapter 190 or section 321.243, the board created under section 205.968 to 205.973, and any other public subdivision or public corporation having the power to tax.

A school district "perform[s] the duties of the state in the conduct and maintenance of . . . public schools," and is "a subordinate agency, subdivision, or instrumentality of the state." *State ex inf. McKittrick v. Whittle*, 63 S.W.2d 100, 102 (Mo. banc 1933). However, that does not make a school district, or any other political subdivision, the

"state" with employees who are "state employees." *See P.L.S. ex rel. Shelton v. Koster*, 360 S.W.3d 805, 815 (Mo. App. W.D. 2011) ("School districts are not typically regarded as a division or department of state government, but, as already mentioned, are considered legally separate, special-purpose, local governmental subdivisions with powers similar to those of a town, village, or county, including the ability to levy taxes."). The distinction between the "state" and a school district was most recently underscored in *S.M.H. v. Schmitt*, 618 S.W.3d 531 (Mo. banc 2021), where our Supreme Court unequivocally held:

> [P]ublic school districts in Missouri are regularly considered political subdivisions--not agencies of the state. *See* Mo. const. art X, sec. 15 ("The term "other political subdivision," . . .shall be construed to include . . . school [districts'"). Public school districts, as political subdivisions, are distinct from "agencies of the state." *See P.L.S.*, 360 S.W.3d at 812-13. In *P.L.S.*, the court of appeals observed, while school districts are certainly "governmental instrumentalities," they are not "agencies of the state" under the "technical, governmental sense." *Id*. at 813. Instead, school districts are "political subdivisions" and "considered legally separate, special-purpose, local governmental subdivision with powers similar to those of a town, village, or county." *Id*. at 815.
>
> Because school districts are not "agencies of the state," district employees are routinely excluded from statutory provisions covering employees of "agencies of the state." *See*, *e.g.*, *id*. at 815.

It follows, therefore, that section 105.800 *et. seq*., which applies by its express terms to the "state" and to "state employees," has no application to school districts or to school district employees.

Because the School District is not the "state," and Poke is not a "state employee," section 105.850 has no application to this case, and cannot be relied on to support the conclusion that sovereign immunity is not waived for the School District pursuant to

section 287.780. The trial court's express reliance on *Krasney* and *King* to reach a contrary conclusion is legally erroneous.[11]

Section 287.780 and section 287.030.1(2) combine to expressly waive sovereign immunity

We are nonetheless required to affirm the trial court's grant of summary judgment on any ground supported by the record. *Estes as Next Friend for Doe*, 623 S.W.3d at 687. As such, we are required to address the fact that, before it even considered the implications of section 105.850, *Krasney* held that "[n]either [section] 287.780 nor any other component of the Workers['] Compensation Law expresses an intention to submit a governmental entity to liability for tort for breach of that retaliatory discharge provision." 765 S.W.2d at 650. *Krasney* reached this conclusion because section 287.780 is silent with respect to an intent to waive sovereign immunity, and because (according to *Krasney*) "[t]he waiver of sovereign immunity . . . must be by express consent to be sued." *Id.* In other words, *Krasney* held that without regard to section 105.850, section 287.780 does not expressly waive sovereign immunity because it is silent on the subject.

In *Wyman*, we observed that "[t]his aspect of *Krasney* may be questionable in light of *Bachtel v. Miller County Nursing Home District*, 110 S.W.3d 799 (Mo. banc 2003)." 376 S.W.3d at 21. In *Bachtel*, the Supreme Court of Missouri addressed how the General Assembly can expressly waive sovereign immunity and held:

> Nothing in the statutes or case law requires that certain magic words must be used in order to waive sovereign immunity. The case law . . . merely requires that the intent of the legislature to waive sovereign immunity must

[11]We do not fault the trial court, however, as Poke primarily defended the School District's motion for summary judgment by more broadly arguing that *Krasney* and *King* were wrongly decided and should be disregarded.

> be express rather than implied. While the most common way to express that intent may be to specifically state that sovereign immunity is waived, the legislature also expresses its intent through other language.

110 S.W.3d at 804. Though *Wyman* questioned *Krasney*'s holding that legislative waiver of sovereign immunity requires an expressly stated consent to be sued, *Wyman* was not required to abrogate the holding, and instead relied on *Krasney's* alternative holding that section 105.850 legislatively disclaims a waiver of sovereign immunity under the Workers' Compensation Law in "favor of a ***state*** employee." *Wyman*, 376 S.W.3d at 21 (emphasis added) (quoting *Krasney*, 765 S.W2d at 650).

In this case, because section 105.850 has no application to the School District, (as we explain *supra*), we are now compelled to take the step alluded to, but avoided, in *Wyman*. We conclude that, in light of *Bachtel*, *Krasney*'s holding that section 287.780 does not expressly waive sovereign immunity because it fails to include an express consent for governmental bodies to be sued should not be followed. Instead, we conclude that the General Assembly's creation of a civil action for damages in section 287.780 that can be brought against ***any*** employer, and the General Assembly's intent that the Workers' Compensation Law apply to ***every*** governmental body included within the definition of "employer" at section 287.030.1(2), combine to reflect an express waiver of sovereign immunity for section 287.780 claims of retaliatory discharge.[12] In support of this conclusion, we note there is no discernable difference between this case and *Bachtel*,

[12]The General Assembly's express waiver of sovereign immunity demonstrated by reading section 287.030.1(2) with section 287.780 remains subject, however, to the retention of sovereign immunity by the state with respect to claims of retaliatory discharge by state employees, as provided in section 105.850, and as held in *Krasney*, *King*, *Wyman*, and *Wille*. For the reasons herein explained, we need not address Poke's contention that this holding in *Krasney*, *King*, *Wyman*, and *Wille* should no longer be followed.

where the Supreme Court found an express waiver of sovereign immunity "[w]here (1) the relevant statutes created a private right of action for nursing home employees who were retaliated against for reporting abuse or neglect of residents, and (2) the statutes were made generally applicable to nursing home districts (which would otherwise be entitled to sovereign immunity)." *Wyman*, 376 S.W.3d at 21 n.6 (citing *Bachtel*, 110 S.W.3d at 804); *see also Otte v. Mo. State Treasurer*, 141 S.W.3d 74, 76 (Mo. App. E.D. 2004) ("In *Bachtel*, . . . the court found that sovereign immunity was waived by statutory language that created a private right [of] action and defined the state agency being sued as being subject to the act."); *cf. R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 429 (Mo. banc 2019) (holding that a provision prohibiting "any person" from discriminating in the use of a public accommodation, read with the definition of public accommodation which included those owned by the state or its political subdivisions, constituted an express waiver of sovereign immunity even though the definition of "person" did not expressly include the state or its political subdivisions).

The School District is not protected by sovereign immunity from Poke's claim for retaliatory discharge pursuant to section 287.780. The trial court committed legal error in concluding otherwise in order to grant summary judgment in favor of the School District. Poke's point on appeal is granted.

Conclusion

The trial court's Judgment is reversed. This matter is remanded to the trial court with instructions to vacate its Judgment, and to conduct further proceedings consistent with this opinion.

Cynthia L. Martin

Cynthia L. Martin, Judge

All concur