SLIP OPINION NO. 2020-OHIO-5220

CORDER ET AL., APPELLEES, *v.* OHIO EDISON COMPANY, APPELLANT.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Corder v. Ohio Edison Co.*, Slip Opinion No. 2020-Ohio-5220.]

Subject-matter jurisdiction—Public utilities—Common pleas courts—Public Utilities Commission is not a court of general jurisdiction, and it may not adjudicate claims involving competing property rights, including those asserted by or against a public utility—Determination of scope of an easement does not depend on the Public Utilities Commission's exercise of administrative expertise or review of a public utility's vegetation-management program, but requires a court to interpret and apply the language of the instrument creating the easement—Judgment affirmed in part and reversed in part, and cause remanded to the trial court.

(No. 2019-0951—Submitted June 17, 2020—Decided November 12, 2020.)

APPEAL from the Court of Appeals for Harrison County,
No. 18 HA 0002, 2019-Ohio-2639.

KENNEDY, J.

{¶ 1} This discretionary appeal from a judgment of the Seventh District Court of Appeals presents a single question: does a common pleas court have subject-matter jurisdiction to determine whether an easement granting a public utility "the right to trim, cut and remove * * * trees, limbs, underbrush or other obstructions" permits the public utility to use herbicide to control vegetation within the easement?

{¶ 2} The General Assembly has vested the Public Utilities Commission of Ohio ("PUCO") with exclusive jurisdiction over most matters relating to public utilities, including the rates charged and the services provided. *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, 893 N.E.2d 824, ¶ 5. However, the PUCO is not a court of general jurisdiction, and it may not adjudicate claims involving competing property rights, including those asserted by or against a public utility. *In re Complaint of Wilkes v. Ohio Edison Co.*, 131 Ohio St.3d 252, 2012-Ohio-609, 963 N.E.2d 1285, ¶ 9. The determination of the scope of an easement does not depend on the PUCO's exercise of its administrative expertise or its review of a public utility's vegetation-management program, but rather requires a court to interpret and apply the language of the instrument creating the easement. *See id.*; *State ex rel. Wasserman v. Fremont*, 140 Ohio St.3d 471, 2014-Ohio-2962, 20 N.E.3d 664, ¶ 28. Interpreting legal instruments is a judicial function, even when the property rights of a public utility are at stake.

{¶ 3} A court of common pleas therefore has subject-matter jurisdiction to determine whether the use of herbicide to control vegetation is within the scope of a public utility's easement. For this reason, the court of appeals correctly reversed the trial court's judgment dismissing this matter as falling within the exclusive jurisdiction of the PUCO. However, the appellate court went beyond the narrow issue presented to it in the appeal when it examined the merits of the case and determined that the language of the easements is ambiguous. The sole issue before

the court of appeals was whether the cause of action and relief sought were within the jurisdiction of the common pleas court, and the appellate court's analysis should have gone no further.

{¶ 4} We therefore affirm the portion of the judgment of the Seventh District relating to the jurisdiction of the court of common pleas, reverse the remaining portion of its judgment, vacate its holding that the language of the easements is ambiguous as well as its suggested interpretation of the language's meaning, and remand this matter to the trial court for further proceedings consistent with this opinion.

Facts and Procedural History

{¶ 5} Appellees Craig D. Corder, Jackie C. Corder, and Scott Corder own property in Nottingham Township, Harrison County, Ohio, that is burdened by electrical-transmission-line easements that were originally obtained by the Ohio Public Service Company in 1948 and were subsequently acquired by appellant, Ohio Edison Company. The easements grant Ohio Edison "the right to trim, cut and remove at any and all times such trees, limbs, underbrush or other obstructions as in the judgment of [Ohio Edison] may interfere with or endanger [its] structures, wires or appurtenances, or their operation."

{¶ 6} Following a widespread electrical blackout in August 2003, the Federal Electric Regulatory Commission imposed a requirement that public utilities implement a Transmission Vegetation Management ("TVM") program to prevent vegetation growth from interfering with transmission lines. The PUCO adopted that requirement as an administrative rule, Ohio Adm.Code 4901:1-10-27(E)(1)(f). Ohio Edison's vegetation-management plan was adopted pursuant to that provision and became effective in 2010.

{¶ 7} According to Katherine M. Bloss, the manager of transmission-vegetation management for First Energy Service Company (the company that administers the TVM program for Ohio Edison), both the TVM program and

established industry practice require the use of herbicides to control vegetation on Ohio Edison's electrical-transmission-line easements throughout the state, including those passing through the Corders' property. She explained that "the only absolute way * * * to avoid future interference with incompatible vegetation that remains after vegetation removal is to use herbicides to remove it."

{¶ 8} Rogerio Maldonado, a transmission forestry specialist for First Energy Service Company, had visited the Corders' property and determined that the condition of the vegetation on the easements required the use of herbicide to prevent interference and contact with Ohio Edison's electrical lines.

{¶ 9} Christina Todd, the general manager of transmission engineering for First Energy Service Company, opined that if vegetation is not controlled, it might interfere with Ohio Edison's electrical-transmission lines and "could result in cascading outages and dangers to life and property."

{¶ 10} The Corders objected to the use of herbicide on the easements as incompatible with their use of their land as an organic farm. They filed this action in the Harrison County Common Pleas Court seeking injunctive relief and a declaratory judgment that the easements do not give Ohio Edison the right to use herbicide to control vegetation on their property. The parties each moved for summary judgment.

{¶ 11} The trial court noted: "The [question] before the Court is whether 'remove' encompasses herbicides in regards to vegetation removal." However, relying on the Seventh District's decision in *DeLost v. First Energy Corp.*, 7th Dist. Mahoning No. 07 MA 194, 2008-Ohio-3086, the trial court concluded that the question whether a public utility may remove vegetation from an easement involves a factual issue regarding the service provided by the public utility and therefore "the PUCO has exclusive jurisdiction over the issue of vegetation removal on a public utility transmission line."

{¶ 12} The Seventh District reversed the trial court's judgment. It distinguished this case from its decision in *DeLost* and from our decision in *Corrigan v. Illum. Co.*, 122 Ohio St.3d 265, 2009-Ohio-2524, 910 N.E.2d 1009, on the ground that no party in *DeLost* or *Corrigan* had challenged the public utilities' right to remove trees under the easements at issue in those cases; rather, the landowners had argued that the removal of trees was not needed to maintain the public utilities' power lines. 2019-Ohio-2639, ¶ 39. In contrast, the court of appeals noted, the Corders' complaint sought a declaration that the easements did not grant Ohio Edison the right to control vegetation in the easements using herbicide. *Id.* at ¶ 14. It concluded that the easements were subject to multiple interpretations and therefore were ambiguous regarding whether the word "remove" in the easements had been intended to include the right to use herbicide. *Id.* at ¶ 51-52. It then remanded the matter to the trial court for it to resolve the ambiguity concerning the scope of the easements. *Id.* at ¶ 52-53.

{¶ 13} We accepted for review Ohio Edison's two propositions of law:

> l. When a state court sets its own standards for methods that a utility can use to permanently maintain its lines, it usurps the exclusive jurisdiction of the PUCO to ensure that a public utility has adequate facilities to deliver electric power contrary to *Corrigan*.
>
> 2. When an Ohio court improperly finds an ambiguity within a common word or phrase that frustrates the entire purpose of a utility easement, it fails to adhere to the important public policy of permitting electric utilities to erect and properly maintain adequate facilities to provide reliable electric service under R.C. 4905.22.

See 157 Ohio St.3d 1439, 2019-Ohio-4211, 132 N.E.3d 700. The resolution of Ohio Edison's first proposition of law resolves this case, and therefore we decline to address its second proposition of law.

Law and Analysis

The Subject-Matter Jurisdiction of the Common Pleas Court

{¶ 14} Subject-matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11-12, 34. "A court's subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case." *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 19. Instead, "the focus is on whether the forum itself is competent to hear the controversy." *State v. Harper*, ___ Ohio St.3d ___, 2020-Ohio-2913, ___ N.E.3d ___, ¶ 23, citing 18A Wright, Miller & Cooper, *Federal Practice and Procedure*, Section 4428, at 6 (3d Ed.2017) ("Jurisdictional analysis should be confined to the rules that actually allocate judicial authority among different courts").

{¶ 15} Article IV, Section 4(A) of the Ohio Constitution provides that "[t]here shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state," and Article IV, Section 4(B) provides that "[t]he courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters * * * as may be provided by law." "[W]e have interpreted Article IV's mandate that the courts of common pleas have jurisdiction 'as may be provided by law' to mean that '[t]he general subject matter jurisdiction of Ohio courts of common pleas is defined *entirely by statute*.' " (Emphasis sic.) *Ohio High School Athletic Assn. v. Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436, ¶ 7, quoting *State v. Wilson*, 73 Ohio St.3d 40, 42, 652 N.E.2d 196 (1995).

{¶ 16} The General Assembly exercised its power to define the subject-matter jurisdiction of the common pleas courts in enacting R.C. Chapter 2721, the Declaratory Judgment Act. Subject to a statutory limitation that is not at issue here, "courts of record may declare rights, status, and other legal relations," R.C. 2721.02(A), and "any person interested under a deed, will, written contract, or other writing constituting a contract * * * may have determined any question of construction or validity arising under the instrument * * * and obtain a declaration of rights, status, or other legal relations under it." R.C. 2721.03. In addition, R.C. Chapter 2727 authorizes the common pleas courts to grant injunctions and temporary restraining orders in the cases before it. R.C. 2727.02; 2727.03; *see State ex rel. CNG Fin. Corp. v. Nadel*, 111 Ohio St.3d 149, 2006-Ohio-5344, 855 N.E.2d 473, ¶ 15 (the common pleas court has "basic statutory jurisdiction over actions for injunction and declaratory judgment"); *State ex rel. Erie Cty. Democratic Executive Commt. v. Brown*, 6 Ohio St.2d 136, 138, 216 N.E.2d 369 (1966) (same); *see also Apel v. Katz*, 83 Ohio St.3d 11, 697 N.E.2d 600 (1998) (reversing court of appeals' judgment in action for declaratory judgment interpreting the scope of an easement).

The Exclusive Jurisdiction of the PUCO

{¶ 17} "The General Assembly enacted R.C. 4901.01 et seq. to regulate the business activities of public utilities and created [the] PUCO to administer and enforce these provisions." *Corrigan*, 122 Ohio St.3d 265, 2009-Ohio-2524, 910 N.E.2d 1009, at ¶ 8. As we explained in *Allstate Ins. Co.*,

> "The General Assembly, by the enactment of statutory provisions requiring a public utility to file and adhere to rate schedules, forbidding discrimination among its customers, prohibiting free service, and providing a detailed procedure for service and rate complaints, *has lodged exclusive jurisdiction in such matters in the*

> *Public Utilities Commission*, subject to review by the Supreme Court."

(Emphasis added.) 119 Ohio St.3d 301, 2008-Ohio-3917, 893 N.E.2d 824, at ¶ 5, quoting *State ex rel. N. Ohio Tel. Co. v. Winter*, 23 Ohio St.2d 6, 260 N.E.2d 827 (1970), paragraph one of the syllabus.

{¶ 18} "That PUCO has exclusive jurisdiction over service-related matters does not diminish 'the basic jurisdiction of the court of common pleas * * * in other areas of possible claims against utilities, including pure tort and contract claims.' " (Ellipsis sic.) *Id*. at ¶ 6, quoting *State ex rel. Ohio Edison Co. v. Shaker*, 68 Ohio St.3d 209, 211, 625 N.E.2d 608 (1994). That is, the mere fact that a claim has been brought against a public utility does not mean that the claim is within the exclusive jurisdiction of the PUCO. *Id.*

{¶ 19} In *Corrigan*, we applied a two-part test asking the following in determining whether the PUCO had exclusive jurisdiction over a dispute in which a landowner sought to prevent a public utility from removing a silver-maple tree within a power-line easement: (1) is the administrative expertise of the PUCO required to resolve the issue in dispute, and (2) does the act complained of constitute a practice normally authorized by the utility? *Corrigan* at ¶ 11. We explained that if the answer to either part of the test is no, then the dispute is not with the PUCO's exclusive jurisdiction. *Id*. at ¶ 12.

{¶ 20} We concluded that the question whether the silver-maple tree should be removed from the easement rather than pruned was committed to the PUCO's exclusive jurisdiction. We explained that the utility's decision to remove the tree was governed by a vegetation-management plan that was regulated by the PUCO, so determining the reasonableness of that decision required the PUCO's administrative expertise. *Corrigan*, 122 Ohio St.3d 265, 2009-Ohio-2524, 910 N.E.2d 1009, at ¶ 15. We also recognized that vegetation removal is necessary to

maintain safe and reliable electrical service. *Id.* at ¶ 16. Accordingly, we held that both prongs of the test had been satisfied. *Id.*

{¶ 21} Importantly, we pointed out in *Corrigan* that there was no question in that case that the public utility had a valid easement, that the silver maple was within the easement, and that the easement "grant[ed] the company the right to remove any tree within the easement that could pose a threat to the transmission lines." *Id.* at ¶ 19. It was also "clear from the record that the [landowners were] not contesting the meaning of the language of the easement but rather the company's decision to remove the tree instead of pruning it." *Id.* at ¶ 20. That is, the scope of the easement was not at issue in *Corrigan*.

The Scope of the Easements

{¶ 22} Unlike in *Corrigan*, the parties here dispute the scope of the property rights conferred on Ohio Edison by the language of the easements.

{¶ 23} Applying the *Allstate Ins. Co.* test here, we recognize that this court determined in *Corrigan* that vegetation control is a practice normally authorized by a public utility and is necessary to maintain safe and reliable electrical service, 122 Ohio St.3d 265, 2009-Ohio-2524, 910 N.E.2d 1009, at ¶ 16.

{¶ 24} However, the exercise of administrative expertise is not needed to determine whether the language in the easements granting Ohio Edison "the right to trim, cut and remove at any and all times such trees, limbs, underbrush or other obstructions" also authorizes it to use herbicides to control vegetation within the easements. Nor does that determination turn on a consideration of the requirements of Ohio Edison's TVM program, an expert opinion on the need to use herbicides, industry practice, or the PUCO's regulations.

{¶ 25} Rather, the scope of an easement must be determined from the plain language of the conveyance that created it. We have explained that "[w]hen an easement is created by an express grant, * * * *the extent of and limitations on the use of the land depend on the language in the grant.*" (Emphasis added.)

Wasserman, 140 Ohio St.3d 471, 2014-Ohio-2962, 20 N.E.3d 664, at ¶ 28. Moreover, "[t]he construction of written contracts and instruments of conveyance is a matter of law." *Alexander v. Buckeye Pipe Line Co*., 53 Ohio St.2d 241, 374 N.E.2d 146 (1978), paragraph one of the syllabus.

{¶ 26} However, the PUCO " 'does not possess judicial power and may not adjudicate controversies between parties as to property rights.' " *Wilkes*, 131 Ohio St.3d 252, 2012-Ohio-609, 963 N.E.2d 1285, at ¶ 9, quoting *Dayton Communications Corp. v. Pub. Util. Comm*., 64 Ohio St.2d 302, 303-304, 414 N.E.2d 1051 (1980). The authority to decide "competing claims of property ownership * * * is constitutionally reserved to the judiciary." *Dayton Communications Corp.* at 303. *Accord Marketing Research Servs., Inc. v. Pub. Util. Comm*., 34 Ohio St.3d 52, 56, 517 N.E.2d 540 (1987) ("The PUCO is not a court of general jurisdiction, and therefore has no power to determine legal rights and liabilities with regard to contract rights or property rights, even though a public utility is involved").

{¶ 27} The PUCO does not have exclusive jurisdiction to decide the scope of an easement owned by a public utility, because such a determination requires an adjudication of competing property rights that may be made only by a court. Ohio's public-utilities law does not deprive the common pleas courts of subject-matter jurisdiction to declare the rights of the parties regarding an easement and to enjoin violations of the easement, even when a public utility's property rights are at stake.

Conclusion

{¶ 28} We reiterate that a court's subject-matter jurisdiction turns on whether the court has the constitutional and statutory power to "entertain and adjudicate a particular class of cases * * * [and its jurisdiction is determined] without regard to the rights of the individual parties involved in a particular case." *Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, at ¶ 19. And when a declaratory-judgment action seeks an adjudication of the terms of an electrical-

transmission-line easement to determine the respective property rights of a landowner and a public utility, that particular class of case is not within the exclusive jurisdiction of the PUCO, but rather may be heard and decided by a court of common pleas.

{¶ 29} The court of appeals in this case, however, looked beyond the narrow issue raised on appeal, reviewed the particular facts in this case, and held that the common pleas court had jurisdiction over the action *because* the terms of the easement were ambiguous. 2019-Ohio-2639 at ¶ 51-52. We acknowledge that our cases have sometimes suggested that in determining whether the PUCO or the common pleas court has subject-matter jurisdiction over a controversy, "we are not limited by the allegations in the complaint" and "we must review the substance of the claims to determine if service-related issues are involved." *Corrigan*, 122 Ohio St.3d 265, 2009-Ohio-2524, 910 N.E.2d 1009, at ¶ 10. But such language was meant to explain that a claimant may not avoid the exclusive jurisdiction of the PUCO by disguising a service-related claim as a contract or tort claim through creative pleading. *See, e.g.*, *State ex rel. Columbia Gas of Ohio, Inc. v. Henson*, 102 Ohio St.3d 349, 2004-Ohio-3208, 810 N.E.2d 953, ¶ 19 ("the mere fact that [the public utility's customer] cast its allegations in the underlying case to sound in tort is insufficient to confer jurisdiction upon the common pleas court").

{¶ 30} The court of appeals went too far by reviewing the merits of the Corders' causes of action and finding that the easements are ambiguous. The Corders are seeking a declaration regarding the scope of Ohio Edison's easements as well as injunctive relief, and their claims are within the subject-matter jurisdiction of the common pleas court. The merits of those claims, including any question of the easements' ambiguity, were beyond the scope of the appeal and remain for the trial court's review in the first instance.

{¶ 31} Accordingly, we affirm the portion of the judgment of the Seventh District Court of Appeals relating to the jurisdiction of the court of common pleas,

reverse the remaining portion of its judgment, vacate its holding that the language of the easement is ambiguous as well as its suggested interpretation of the language's meaning, and remand the cause to the Harrison County Common Pleas Court for further proceedings consistent with this opinion.

Judgment affirmed in part
and reversed in part,
and cause remanded.

FRENCH, DONNELLY, and STEWART, JJ., concur.

FISCHER, J., concurs in judgment only.

DEWINE, J., concurs in part and dissents in part, with an opinion joined by O'CONNOR, C.J.

DEWINE, J., concurring in part and dissenting in part.

{¶ 32} I agree with the majority that the claims raised by the Corders regarding the construction of the easements are within the subject-matter jurisdiction of the courts of common pleas. But I see no need to remand the matter to the trial court. The easements unambiguously permit the use of herbicide, and there is no reason we ought not just say so.

This court should decide the meaning of the easements

{¶ 33} Ohio Edison Company holds easements over the Corders' property for the maintenance of electrical-power lines. The company determined that it needed to use herbicide to control vegetation that may interfere with the power lines. The Corders filed this action to prevent Ohio Edison from using herbicide, asserting that the easements do not authorize Ohio Edison to remove vegetation in that manner. Because the Corders' claims ask only for the interpretation of the language in the easements, they fall within the subject-matter jurisdiction of the courts. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146 (1978), paragraph one of the syllabus; R.C. 2721.03 ("any person interested under

a deed, will, written contract, or other writing constituting a contract * * * may have determined any question of construction or validity arising under the instrument * * * and obtain a declaration of rights, status, or other legal relations under it").

{¶ 34} The majority is correct that subject-matter jurisdiction is proper, but there is no reason to remand this matter to the trial court. Construing the language in the easements is purely a question of law. The record is complete and there are no unresolved factual matters. Further, both parties have fully briefed the issue and agreed during oral argument that this court may decide the easement-interpretation question. Remanding the case will only unnecessarily delay the resolution of this matter.

The easements are unambiguous

{¶ 35} It is undisputed that the easements grant Ohio Edison some ability to remove interferences with its electrical-power lines; the question is the scope of its authority. The disputed language provides:

> The easement and rights herein granted shall include the right to * * * trim, cut and remove at any and all times such trees, limbs, underbrush or other obstructions as in the judgment of [the utility company] may interfere with or endanger said structures, wires or appurtenances, or their operation.

{¶ 36} As we will see, the court of appeals engaged in a formalistic analysis of the phrase "trim, cut and remove" that failed to consider the phrase in the context of the rest of the language in the easements.

{¶ 37} The court homed in on the lack of a comma after the word "cut." 2019-Ohio-2639, ¶ 41. It reasoned that the lone comma separates the word "trim" from the conjunctive phrase "cut and remove," thereby allowing Ohio Edison to either "trim" or "cut and remove" the vegetation. *Id.* Presumably recognizing the

oddity of a reading that allows a utility to remove only what it cuts but not what it trims, the court alternatively proposed that the word "remove" could be read to modify both the words "trim" and "cut." *Id.* Under that view, Ohio Edison can either "trim and remove" or "cut and remove" vegetation, but it can't "remove" vegetation in a manner other than by trimming and cutting it. *Id.* (It's hard to see though how one could get the language "trim and remove" from the phrase "trim, cut and remove." The absence of a second comma either means something or it doesn't—the court can't have it both ways.)

{¶ 38} Having found two possible interpretations of the phrase "trim, cut and remove," the court of appeals declared it to be ambiguous. *Id.* at ¶ 51. But the mere fact that there are competing interpretations of a legal text doesn't mean that the text is ambiguous. One reading will often be better than the others, as often the less-compelling interpretations will strain ordinary usage or conflict with the structure or purpose of the text as a whole. *See Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 41, 128 S.Ct. 2326, 171 L.Ed.2d 203 (2008). A court's role is not just to decide whether language offers itself to more than one possible interpretation but is also to determine whether one reading is superior to the others. Only when a court has concluded that no one reading of the language is superior to the other possibilities can it declare the language ambiguous.

{¶ 39} In this case, one reading of the text is indeed superior to the others, but it's not one of the interpretations set forth by the court of appeals below. As I will explain, the best reading is that the phrase "trim, cut and remove" is a list providing three approaches for dealing with obstructions; in other words, Ohio Edison may simply "remove" the vegetation, independent of trimming or cutting it. The court of appeals rejected this reading because of the missing comma and the drafter's use of the word "and" instead of "or." 2019-Ohio-2639 at ¶ 41.

{¶ 40} Such a hypertechnical reading misses the forest for the trees. The word "and" can just as easily be read to grant Ohio Edison the right to trim, the

right to cut, *and* the right to remove. *See Shaw v. Natl. Union Fire Ins. Co. of Pittsburgh, Pa.*, 605 F.3d 1250, 1253 (11th Cir.2010), quoting *Peacock v. Lubbock Compress Co.*, 252 F.2d 892, 893 (5th Cir.1958) ("The problem with *and* is that 'chameleonlike, it takes its color from its surroundings' " [emphasis added in *Shaw*]). The absence of a comma between the words "cut" and "remove" may tell us nothing more than the drafter's stance on the Oxford-comma debate.[1] Indeed, when we read the easement language in its entirety, we see that serial commas were omitted throughout.[2]

{¶ 41} So, we can't simply decide the case on the nonuse of a comma that many people don't use regularly anyway. We have to go further and look at how these different readings work in the context in which they were written. Rather than zero in on the meaning of a phrase in isolation, we should consider the text as a whole. *Great Lakes Bar Control, Inc. v. Testa*, 156 Ohio St.3d 199, 2018-Ohio-5207, 124 N.E.3d 803, ¶ 11. When we apply the court of appeals' view of the phrase, we find that it actually makes little sense in context.

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1. Oxford comma, *n.*, "a comma immediately preceding the conjunction in a list of items." *Oxford English Dictionary* (3d Ed.2005). *See also* Okrent, *The Best Shots Fired in the Oxford Comma Wars*, The Week (Jan. 28, 2013), available at https://theweek.com/articles/468304/best-shots-fired-oxford-comma-wars (accessed Oct. 22, 2020) [**https://perma.cc/FDB6-26BF]** (noting that the 1937 *New York Times* style guide recommended against the regular use of the serial comma, while Follett's 1966 edition of *Modern American Usage* was for it); *In re Enron Creditors Recovery Corp.*, 380 B.R. 307, 323 (S.D.N.Y. 2008) ("the fact that the propriety of placing a comma at that point is hotly disputed means one cannot read anything at all into its absence—at least not without knowing where the draftsman learned his or her comma-lore").

2. "The easement and rights herein granted shall include the right to erect, inspect, operate, replace, repair, patrol and permanently maintain upon, over and along the above described right-of-way across said premises all necessary structures, wires and other usual fixtures and appurtenances used for or in connection with the transmission and distribution of electric current, and the right of ingress and egress upon, over and across said premises for access to and from said right-of-way, and the right to trim, cut and remove at any and all times such trees, limbs, underbrush or other obstructions as in the judgment of Grantee may interfere with or endanger said structures, wires or appurtenances, or their operation." (Underlining added.)

{¶ 42} Take, for instance, a utility's decision to pull a bush out of the ground, roots and all. Under the court of appeals' interpretation, the language of the instrument would not authorize such a method because it does not involve cutting or trimming the plant. Or consider a situation in which a utility must mow grass to maintain access to the power line. Apparently, the company would be outside the scope of its authority under the easement if it mowed the grass without also raking up what had been cut.

{¶ 43} When we read the phrase in the context of the remainder of the sentence, however, we are reminded that the easements grant the utility the authority to "trim, cut and remove * * * trees, limbs, underbrush *or other obstructions*." (Emphasis added.) And the phrase "other obstructions" encompasses more than just vegetation—it could include a stone wall, a treehouse, or a kite caught on the power lines. The problem with the court of appeals' reading is that the utility can't simply "cut" or "trim" the stone wall, the treehouse, or the kite out of the way. Its only option is to remove them. Read in context, then, it is clear that the word "remove" contemplates a separate method of dealing with interferences: the easement language grants the utility the authority to "remove * * * trees, limbs, underbrush or other obstructions."

{¶ 44} The Corders contend that even under this reading, the use of herbicide does not qualify as "removal," because it involves spraying and killing the plant rather than physically taking it away from the property. But of course, transferring an item from one location to another is only one meaning of the word "remove." Others are "to get rid of," "to eradicate," and "to eliminate." *Webster's New International Dictionary* 2108 (2d Ed.1947). The use of herbicide fits easily within those uses of the word. Nor is there any other language in the easements limiting the manner of removal. Rather, the language is included within a broad grant of authority allowing the utility to "at any and all times" remove obstructions

that "may interfere" with its power lines. Read in context, then, it seems clear that the instruments do not restrict the method of removal.

{¶ 45} Thus, the easements do not prohibit Ohio Edison from using herbicide. Any arguments about the reasonableness of its decision to do so falls under the jurisdiction of the Public Utilities Commission of Ohio.

Conclusion

{¶ 46} I agree that the claims asserted by the Corders were premised on the scope of the easements, and that is a legal question for the courts to resolve. But we should resolve this case today. Because the easements unambiguously gave Ohio Edison the ability to remove vegetation using herbicide, the case should be remanded to the trial court to enter a declaratory judgment in favor of Ohio Edison. I therefore concur in part and dissent in part.

O'CONNOR, C.J., concurs in the foregoing opinion.

Kidder Law Firm, L.L.C., and Charles L. Kidder; Arenstein & Andersen Co., L.P.A., Nicholas I. Andersen, and Eric R. McLoughlin, for appellees.

Roetzel & Andress, L.P.A., Denise M. Hasbrook, and Nathan Pangrace, for appellant.
