

IN THE COURT OF COMMON PLEAS
HARRISON COUNTY, OHIO

FILED
2021 JUL 28 AM 9:49
LESLIE A. MILLIKEN
CLERK OF COURTS
HARRISON COUNTY, OHIO

CRAIG D. CORDER, et al.

Case No. CVH-2017-0057

Plaintiffs

v.

ORDER

OHIO EDISON COMPANY

Defendant

This matter came on before this Court upon Plaintiffs' Motion For Summary Judgment filed January 17, 2018, Defendant's Cross Motion For Summary Judgment filed January 26, 2018, Plaintiffs' Memorandum In Opposition filed February 9, 2018, Defendant's Opposition To Plaintiffs' Motion For Summary Judgment filed February 14, 2018, Defendant's Reply Brief filed March 1, 2018, Plaintiffs' Reply Brief filed March 2, 2018, Plaintiffs' Supplemental Brief filed March 17, 2021 and Defendant's Supplemental Brief filed March 19, 2021.

Plaintiffs Craig D. Corder and Jackie C. Corder are titled owners of three (3) parcels of real estate located in Nottingham Township, Harrison County, Ohio. Plaintiff Scott Corder is the titled owner of one (1) parcel of land in Nottingham Township, Harrison County, Ohio. The prior owners of these parcels executed three (3) separate electrical transmission line easements in favor of The Ohio Public Service Company. These easements were signed in 1948. The Plaintiffs are in agreement to allow the present owners, Ohio Edison Company, to maintain these easements, but do not agree that the Defendant may use herbicide within the easements. In 2017, the Plaintiffs were advised for the first time that Ohio Edison's service company, First Energy, intended to use herbicides. Defendant admits that herbicides have not been used in prior

vegetation management cycles and that they were not specifically foreseen or used when the easements were signed in 1948.

All three easements contain the same language. This Court includes the language here along with Plaintiffs' argument for analysis and emphasis.

“The easement and rights herein granted shall include the right to erect, inspect, operate, replace, repair, patrol and permanently maintain (all verbs) upon, over and along the above described right-of-way across said premises all necessary structures, wires and other usual fixtures and appurtenances (all nouns subject to the actions of the previous verbs) 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 (function word used to extend the sentence) the right to trim, cut and remove (all verbs) at any and all times such trees, limbs, underbrush or other obstructions (all nouns subject to the actions of the previous verbs in this part of the sentence) as in the judgment of Grantee may interfere with or endanger said structures, wires or appurtenances, or their operation.”

(Words in parentheses and underlined added for analysis and emphasis)

The bulk of Counsels' arguments herein have centered on the meaning of “the right to trim, cut and remove at any and all times such trees, limbs, underbrush or other obstructions.” This Court's review of the language of the easements in question is to be performed in light of the following. “Where the terms of an existing contract are clear and unambiguous, the Court cannot, in effect, create a new contract by finding an intent not expressed in the clear language employed by the parties.” Alexander v. Buckeye Pipeline Co., 53 Ohio St. 2d 241, 246, 374 N.E. 2d 146 (1978). “As a matter of law, a court may look no further than the document itself to determine the intent of the parties.” Sunoco, Inc. (R&M) v. Toledo Edison Co., 129 Ohio St. 3d 397, 2011-Ohio-2720, 953 N.E. 2d 285, ¶ 37. “As a matter of law, a contract is unambiguous if it can be given a definite legal meaning.” Westfield Ins. Co. v. Galatis, 100 Ohio St. 3d 216, 2003-Ohio-5849, 797 N.E. 2d 1256, ¶ 11.

Little argument has been directed to the following language found within all three easements:

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...

As stated above, the Defendant has the right to “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 ...” According to the Merriam-Webster dictionary, “maintain” when used as a verb as herein is defined as, “to keep in an existing state (as of repair, efficiency or validity): preserve from failure to decline.” Should a balloon or kite or treehouse or other structure come within the boundaries of the easement, either by an intentional act or in the example of a balloon or kite possibly merely being windblown, the Defendant would certainly be within its right to remove the object. The easement provides the Defendant with the right to maintain the right-of-way which includes the right to protect its efficiency and preserve it from failure and decline.

Now let us look to the language of the easement that has drawn the most attention.

... 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.

Allowing the Defendant to maintain the easement against the above stated intrusion as stated above, the parties became more specific in their language in dealing with “trees, limbs, underbrush and other obstructions.” When dealing with the same the Defendant was given “the right to trim, cut and remove at any and all times ...” The Plaintiffs argue that “to trim” involves

an activity that leaves vegetation alive but merely smaller and more manageable while to cut would cover activities that kill vegetation. The Plaintiffs further argue that the language “trim, cut and remove” can be read as merely to trim and remove branches and grass (through raking or grass catcher attachment) and cut and remove for instance a tree or that the language can be read to trim (and leave the waste) and cut and remove (what has been cut).

Either interpretation provides meaning for the words “trim and cut.” For “remove” to be a standalone right then the words “trim and cut” become superfluous. “When interpreting a contract, a court must presume that words are used for a specific purpose and should avoid interpretations that render portions meaningless or unnecessary.” Corder v. Ohio Edison, 2019-Ohio-2639 ¶ 42 citing Wohl v. Swinney, 118 Ohio St. 3d 277, 2008 -Ohio-2334, 888 N.E. 2d 1062, ¶ 22 (2008).

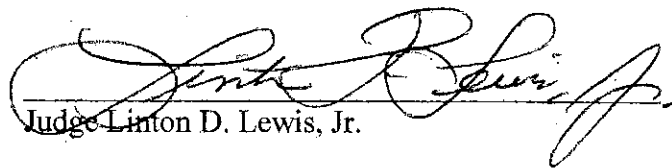
Were “remove” to be a standalone third right, then it could reasonably be argued that Defendant need not remove what it cuts. Defendant could cut down a seventy-foot tree and the landowner would be responsible for its disposal. It is hard to imagine a landowner in 1948 or now, who would agree to allow a utility company to cut down a tree to protect its utility lines but not also be required to remove the same.

The Defendant argues that the term “remove” includes and grants them an unfettered right to employ any method they deem necessary to eliminate trees, limbs and underbrush. Such a right would include merely burning the same all along the easement boundary. Again, such a right could not have been the intention of the drafters of the easements herein.

Wherefore, this Court finds no ambiguity in the language of the easements in question. The plain language of the same limits the maintenance of the vegetation on the easements to “trim, cut and remove ...” Such language does not include the use of herbicides.

After having considered Plaintiffs' Motion For Summary Judgment and Defendant's Cross Motion For Summary Judgment and after construing the evidence most strongly in favor of the nonmoving parties and having determined that there is no genuine issue as to any material fact and that reasonable minds can come to but one conclusion and further that there is no just reason for delay, this Court makes the following order.

This Court finds for the Plaintiffs and against the Defendant, grants Plaintiffs' Motion for Summary Judgment and denies Defendant's Cross Motion For Summary Judgment. Costs assessed to the Defendant. This is a final appealable order. **IT IS SO ORDERED.**


Judge Linton D. Lewis, Jr.

WITHIN THREE (3) DAYS OF ENTERING THIS JUDGMENT UPON THE JOURNAL, THE CLERK SHALL SERVE NOTICE OF THIS JUDGMENT AND ITS DATE OF ENTRY UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR. SERVICE SHALL BE MADE IN A MANNER PRESCRIBED IN CIVIL RULE 5(B) AND SHALL BE NOTED IN THE APPEARANCE DOCKET. CIVIL RULE 58.

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Attys. Charles Kidder / Nicholas I. Anderson / Eric R. McLaughlin

Attys. Denise Hasbrook / Stephen W. Funk

Judge Linton Lewis, Jr.