

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
HARRISON COUNTY

CRAIG D. CORDER, et al.,

Plaintiffs-Appellees,

v.

OHIO EDISON COMPANY,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY **Case No. 21 HA 0008**

Civil Appeal from the
Court of Common Pleas of Harrison County, Ohio
Case No. CVH-2017-0057

BEFORE:

Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed.

Atty. Charles L. Kidder and *Atty. Steven R. R. Anderson*, Kidder Law Firm, LLC, 131 West Market Street, Cadiz, Ohio 43907, *Atty. Nicholas I. Andersen* and *Atty. Eric R. McLoughlin*, Arenstein & Andersen Co., LPA, 6740 Avery-Muirfield Drive, Suite B, Dublin, Ohio 43017, for Plaintiffs-Appellees

Atty. Stephen W. Funk, Roetzel & Andress, LPA, 222 South Main Street, Suite 400, Akron, Ohio 44308, *Atty. Denise M. Hasbrook*, Roetzel & Andress, LPA, One SeaGate, Suite 1700, Toledo, Ohio 43604, and *Atty. James E. von der Heydt*, Benesch, Friedlander, Coplan & Aronoff LLP, 200 Public Square, Suite 2300, Cleveland, Ohio 44114, for Defendant-Appellant.

Dated: December 30, 2022

WAITE, J.

{¶1} This case is before us for the second time. In the first appeal, we reversed and remanded the matter to allow the trial court to interpret (in a declaratory judgment action) what we determined was ambiguous language in three related public utility easements. *Corder v. Ohio Edison Co.*, 7th Dist. Harrison No. 18 HA 0002, 2019-Ohio-2639 (hereinafter "*Corder I*"). The language in question relates to whether the phrase "the right to trim, cut and remove" limbs, trees and underbrush would permit Appellant Ohio Edison Company to use herbicides to control vegetation within the easements. The trial court determined that it did not have jurisdiction to hear the matter because the issue fell within the exclusive jurisdiction of the Public Utilities Commission of Ohio ("PUCO"). We disagreed and held that the trial court did have jurisdiction to interpret the language of these easements because the issue raised was a purely contract claim outside the jurisdiction of the PUCO, and because the easement language was ambiguous. *Id.* at ¶ 51-52.

{¶2} The case was appealed to the Ohio Supreme Court, which agreed with the result of *Corder I* (remanding the case to the trial court), but disagreed with our reasoning, concluding that in *Corder I* we should not have attempted to interpret the easement. *Corder v. Ohio Edison Co.*, 162 Ohio St.3d 639, 2020-Ohio-5220, 166 N.E.3d 1180 (hereinafter "*Corder II*"). The Supreme Court determined that the scope of an easement falls within the jurisdiction of the trial courts to interpret, and that it was unnecessary for an appellate court to first determine that the language of the easement was ambiguous or to otherwise interpret the easement. *Corder II* at ¶ 30. The section of *Corder I*

regarding interpretation of the language contained in the easements was reversed to allow the trial court to determine whether the language was ambiguous and to determine on its own how such language should be interpreted. The dissent in *Corder II* would have simply found that the easements unambiguously gave Ohio Edison the right to use herbicides and would have ruled in favor of Ohio Edison without remanding the case to the trial court.

{¶3} On remand, the trial court in this matter found the language was unambiguous and did not permit Appellant to use herbicides. In so doing, the trial court appears to have favored our analysis in *Corder I*: that the phrase "trim, cut and remove" did not mean there was a separate independent right to "remove" vegetation; that the words "trim" and "cut" would have no independent meaning if "remove" was a separate right; and that the word "remove" did not give Ohio Edison the unfettered right to use any method possible of its choosing to control the vegetation within these easements. The trial court did diverge from the language of *Corder I* to find that the easement unambiguously did not allow for the use of herbicides, whereas in *Corder I* we had determined that the easement language was ambiguous.

{¶4} Our analysis in *Corder I*, although premature, largely anticipated the arguments presented by Appellant in this matter. Because we have already determined the easement language in question is ambiguous, and in light of the fact that no new evidence was added to the case after remand to the trial court, there is no reason for us to reassess our conclusion. We hold, however, that the ambiguity must be resolved in favor of Appellees. The trial court is correct that there is nothing in the record to prove that the easements were created with the intent that herbicides would be used. Even

though there is some ambiguity in the phrase "the right to trim, cut and remove," that ambiguity does not extend so far as to contemplate the use of herbicides. Although we disagree with the trial court's decision that the language in the easements is unambiguous, we conclude that the trial court's decision is correct. Appellant's assignment of error is overruled and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶15} The history of this case can be found in *Corder II*:

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."

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.

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.”

Rogelio 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.

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.”

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.

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.”

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.

Corder II at ¶ 5-12.

{¶6} Ohio Edison filed a discretionary appeal with the Ohio Supreme Court. The Supreme Court agreed with our conclusion that the trial court had jurisdiction to interpret the language of the easements without infringing on the jurisdiction of the PUCO: "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." *Id.* at ¶ 28. The Court, though, held that we should not have gone on to interpret the easements. *Id.* at ¶ 30. The Supreme Court reversed that portion of our appellate decision interpreting the easement's language and remanded the case to the trial court for that court to determine whether the easements allowed for the use of herbicides to control vegetation within the easements. Two justices filed a concurrence in part, agreeing that the trial court had jurisdiction to interpret the easements, but also concluding that there was no need to remand the case to the trial court because the language of the easements clearly allowed for the use of herbicides.

{¶17} A visiting trial judge was assigned to the case on remand. The parties filed supplemental briefs, but did not supplement the record with any further evidence. On July 28, 2021, the trial court ruled that the word "remove" in the phrase "the right to trim, cut and remove" had no independent meaning other than to modify "trim and remove" and "cut and remove." Thus, the easements unambiguously did not provide for the use of herbicides. (7/28/21 J.E., p. 4.) The court granted summary judgment in the declaratory judgment action in favor of Plaintiffs-Appellees. Appellant Ohio Edison filed this second appeal on August 19, 2021.

Summary Judgment and Declaratory Judgment Standards

{¶18} An appellate court conducts a *de novo* review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.*, 104 Ohio App.3d 598, 603, 662 N.E.2d 1088 (8th Dist.1995).

{¶19} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate

the absence of a genuine issue of fact on a material element of the nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 662 N.E.2d 264 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden of setting forth specific facts showing that there is a genuine issue for trial. *Id.* at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn.*, 122 Ohio App.3d 378, 386, 701 N.E.2d 1023 (8th Dist.1997).

{¶10} The evidentiary materials to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327, 364 N.E.2d 267.

{¶11} As stated in *Corder I*:

A declaratory judgment action is a statutory in nature. R.C. 2721.03, reads, in pertinent part:

* * * any person interested under a deed, will, written contract, or other writing constituting a contract or any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, rule as defined in section 119.01 of the Revised Code, municipal ordinance, township resolution, contract, or franchise may have determined any

question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.* * *

“To obtain declaratory judgment as an alternative to other remedies, a plaintiff must demonstrate three elements: (1) that a real controversy exists between adverse parties; (2) which is justiciable in nature; (3) and that speedy relief is necessary to the preservation of rights which may be otherwise impaired or lost.” *Fairview Gen. Hosp. v. Fletcher*, 63 Ohio St.3d 146, 148-49, 586 N.E.2d 80 (1992), citing *Herrick v. Kosydar*, 44 Ohio St.2d 128, 130, 339 N.E.2d 626 (1975). Parties to an easement commonly seek adjudication of disputed issues through the mechanism of declaratory judgment. See, e.g. *Cliffs & Creeks, L.L.C. v. Swallie*, 7th Dist. Belmont No. 17 BE 0039, 2018-Ohio-5410; *Hills & Hollers, LLC v. Ohio Gathering Co., LLC*, 7th Dist. Belmont No. 17 BE 0040, 2018-Ohio-2814, 116 N.E.3d 801, reconsideration denied, 7th Dist. Belmont No. 17 BE 0040, 2018-Ohio-3425, and appeal not allowed sub nom. *Hills & Hollers, L.L.C. v. Ohio Gathering Co.*, 154 Ohio St.3d 1464, 2018-Ohio-5209, 114 N.E.3d 215; *Watson v. Caldwell Hotel, LLC*, 7th Dist. Noble No. 16 NO 0432, 2017-Ohio-4007, 91 N.E.3d 179.

An easement is “the grant of a use on the land of another.” *Hills & Hollers, LLC v. Ohio Gathering Co., LLC*, 7th Dist. Belmont No. 17 BE 0040, 2018-

Ohio-2814, 116 N.E.3d 801, ¶ 28, reconsideration denied, 7th Dist. Belmont No. 17 BE 0040, 2018-Ohio-3425, ¶ 28, and appeal not allowed sub nom. *Hills & Hollers, L.L.C. v. Ohio Gathering Co.*, 154 Ohio St.3d 1464, 2018-Ohio-5209, 114 N.E.3d 215, ¶ 28, citing *Alban v. R.K. Co.*, 15 Ohio St.2d 229, 231-232, 239 N.E.2d 22 (1968). When an easement is created by an express grant, the easement's extent and limitations depend on the language in the grant. *Id.*, citing *Alban* at 232. When the terms of an easement are clear and unambiguous, a court cannot create new terms by finding an intent not expressed in the language used. *Id.*, citing *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 246, 374 N.E.2d 146 (1978). The language of the easement, considered in light of the surrounding circumstances, is the best indication of the extent and limitations of the easement. *State ex rel. Wasserman v. Fremont*, 140 Ohio St.3d 471, 2014-Ohio-2962, 20 N.E.3d 664, ¶ 28, citing *Apel v. Katz*, 83 Ohio St.3d 11, 17, 697 N.E.2d 600 (1998).

Corder I at ¶ 9-11.

ASSIGNMENT OF ERROR

The trial court erroneously granted summary judgment in favor of Plaintiffs-Appellees, Craig D. Corder, Jackie C. Corder, and Scott Corder (“Appellees” or “Corders”), denying Appellant's Cross Motion for Summary Judgment in its July 28, 2021 Order. Under the plain language of the

easements under dispute, summary judgment should instead have been issued in favor of Ohio Edison.

{¶12} Appellant's argument can be summarized as follows:

{¶13} 1. The trial court misread the language of the easements as being unambiguously against using herbicides, whereas it should have been read as unambiguously allowing for the use of herbicides.

{¶14} 2. The purpose of the easements was for Ohio Edison to act preemptively to control vegetation, which must include the right to use herbicides.

{¶15} 3. The easements should be interpreted in light of the regulatory backdrop governing such easements.

{¶16} 4. The trial court imposed limitations on Ohio Edison that are not contained in the easements.

{¶17} 5. The trial court's grammatical analysis of the phrase "trim, cut and remove" is incorrect.

{¶18} Appellant's first argument, that the easements unambiguously allow for the use of herbicides, has already been refuted by us in *Corder I*, and we see no need to revisit that issue. Although the section of *Corder I* regarding the ambiguity in the easements was reversed by *Corder II*, it was reversed as being premature, rather than legally incorrect. Since the same questions about the phrase "trim, cut and remove" are being raised in this second appeal, and we have already analyzed that easement language in *Corder I*, we rely on that analysis in this appeal, as well.

{¶19} The line of reasoning used by the trial court was nearly the same as ours in *Corder I*: the word "remove" modifies the words "trim" and "cut" and allows for the removal

of what was trimmed and cut; if "remove" is treated as a standalone right, it would render the words "trim" and "cut" superfluous; the common definition of "remove" would not include the right to destroy all living vegetation by spraying chemicals. *Corder I* at ¶ 42-48.

{¶20} Our conclusion in *Corder I* was that the easement language "trim, cut and remove" is ambiguous. Since the language is ambiguous, at least with respect to the use of herbicides, the parties were required to provide evidence that herbicide use was contemplated as one of the rights granted in these easements. "[W]hen the plain language of the written instruments is ambiguous, then a court can look to parol evidence to resolve the ambiguity and ascertain the parties' intent." *Porterfield v. Bruner Land Co., Inc.*, 7th Dist. No. 16 HA 0019, 2017-Ohio-9045, 103 N.E.3d 152, ¶ 17. If parol evidence does not resolve the ambiguity, the contract is construed against the drafter or the party with superior bargaining power, which in this case would be Ohio Edison. *Id.* at ¶ 19; *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 13. For these reasons, we reject Appellant's first argument that the easements in question unambiguously allow for the use of herbicides.

{¶21} As for Appellant's second line of argument, that the easements allowed Ohio Edison to act preemptively to control vegetation, including the use of herbicides, we find no evidence to support that conclusion. As stated in *Corder I*: "[Ohio Edison] concedes that herbicides have not been previously used to control incompatible vegetation on the easements." *Id.* at ¶ 29. Since there was no history of herbicide use, Appellant would have needed to rely on other types of parol evidence to show that herbicide use was contemplated by the parties when the easements were

executed in 1948. The record contained no such evidence in *Corder I*, and since the evidence in the record in this second appeal is identical to the first, we have nothing on which to rely in order to change our reasoning. The evidence we cited in *Corder I* does not support that herbicides were contemplated: herbicide use was first contemplated only after the electrical blackout of 2003; Ohio Edison developed a Transmission Vegetation Management Plan ("TVM") that included the use of herbicides at that time; although herbicides are now a key component in controlling incompatible vegetation in transmission line easements, they were not when the easements were drafted; and Ohio Edison did not notify Appellees of possible herbicide use until 2017. This record reveals herbicides were not considered as a method of vegetation control when these 1948 easements were executed because herbicides were not even considered until approximately 2003.

{¶22} Appellant cites to the case of *Beaumont v. FirstEnergy Corp.*, 11th Dist. Geauga No. 2004-G-2573, 2004-Ohio-5295 in support of the proposition that this easement language does allow for the use of herbicides. In fact, *Beaumont* completely undermines Appellant's argument. First, one of the easements in *Beaumont* was broader than that of the *Corder* easements, giving FirstEnergy Corp. "full authority to trim, cut, remove or otherwise control at any and all times any trees, limbs, brush or other obstructions * * *." (Emphasis added.) *Id.* at ¶ 6. The other two easements limited FirstEnergy to managing trees that interfered with or threatened operations, or that posed a safety hazard to the power lines. *Id.* at ¶ 3-4. It is clear that the easements in *Beaumont* do not contain the same language and are not subject to the same constraints as the easements at issue in this appeal.

{¶23} Second, the issue on appeal in *Beaumont* had nothing to do with the use of herbicides. Despite having broader vegetation control language than Ohio Edison has in this case, FirstEnergy Corp. had relied solely on the trimming of trees to control vegetation prior to the litigation in *Beaumont*. *Id.* at ¶ 12. FirstEnergy then started clearcutting trees to control vegetation, and that is the reason the dispute arose. Although not dispositive, we note that herbicides were not mentioned as a vegetation control method in *Beaumont*, which was litigated in 2003-2004. This is consistent with the evidence presented in the instant matter, which reflects that that herbicide use began being widely discussed in 2003 as a vegetation control method.

{¶24} Appellant cites to *Beaumont* primarily for the premise that the phrase "cut, trim and remove" (different than the Corder easement language) is unambiguous as to allowing the full removal of trees from the easements. As *Beaumont* held: "Although the wording of each of the foregoing clauses is slightly different, each was clearly intended to award the same basic ability to the Illuminating Company; i.e., the full and complete right to remove any tree from the easement area which could endanger or obstruct the proper functioning of the electrical lines." *Id.* at ¶ 21. We agree with Appellant that such right existed in *Beaumont* and likewise exists in the Corder easements. The question has never been whether Ohio Edison may fully remove trees by cutting them down, which was the removal method discussed in *Beaumont*. The question in this case is whether the phrase "trim, cut and remove" in these easements contemplated the use of herbicides in 1948. Once again, *Beaumont* more readily supports the conclusion that the easement language in the instant appeal only permits for cutting and trimming to remove brush, trees, and other vegetation.

{¶25} As to Appellant's third argument, that we should consider the regulatory backdrop in allowing for the use of herbicides, we are more convinced by Appellees' counterarguments. First, the regulatory structure cited by Appellant did not come into being until 1999, more than a half of a century after the easements were drafted. Appellant's own evidence suggests that use of herbicides only became a regulatory issue after 2003. Second, Appellant is conflating the question of contract interpretation, which is under the purview of the courts, with the regulatory aspects of this case, which are governed by the PUCO. "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." *Corder II* at ¶ 2. Regardless of the PUCO and Ohio Administrative Code requirements for vegetation management within utility easements, the scope of an easement is still based on the contractual language of the easement itself. "Interpreting legal instruments is a judicial function, even when the property rights of a public utility are at stake." *Id.*

{¶26} Appellant argues that implicit in any easement is that it includes all things necessary for the dominant estate to carry out the purpose of the easement. *Gulas v. Tirone*, 7th Dist. No. 07 MA 160, 184 Ohio App.3d 143, 2009-Ohio-5076, 919 N.E.2d 833, ¶ 28. This is, of course, true, but it is a legal overreach to further conclude that the use of herbicides is absolutely necessary to carry out the purpose of the Corder easements when it was not necessary for at least the first 50 years of the life of the easements. Appellant is not being denied access or the ability to fully clear brush and trees from the

easements, as long as it is done within the scope of the easements. That scope does not include the use of herbicides.

{¶27} As to Appellant's fourth argument that the trial court imposed limitations on Ohio Edison that are not contained in the easements, Appellant is mistaken. The trial court did hypothesize whether "trim, cut and remove" included simply burning all the vegetation inside the easements, and then ruled out that method as absurd. While that is a question for another day or for the PUCO to answer, the trial court's point was valid. The language of these easements does not provide an unfettered right for Ohio Edison to use any means available or conceivable in order to control vegetation. As we stated in *Corder I*, the common meaning of "remove" means to move from a place or position, to take away, or to take off or shed. *Corder I* at ¶ 43. It is the word "remove" that creates the limitation, not the trial court's interpretation. There are many other words or phrases that could have been used to express more expansive rights. The easement language here is clearly not as broad as the language in the *Beaumont* case discussed earlier, which contained the additional phrase "or otherwise control at any and all times." If Appellant believes, as it contends, that its preferred interpretation of the phrase "trim, cut and remove" should have been adopted by the court, this could only have been resolved by the use of parol evidence regarding the parties' intent. This record contains no evidence that the parties contemplated the use herbicides as part of the definition of "remove" or as part of the phrase "trim, cut and remove."

{¶28} Appellant's fifth argument is that the trial court used an improper grammatical analysis when it interpreted the phrase "trim, cut and remove." We disagree. As stated earlier, the trial court used the analysis similar to the one we used in *Corder I*,

and we see no need for us to revisit the issue. The lack of a comma after the word "cut," and the use of the word "and" instead of the word "or" have grammatical significance that led us to conclude that there was no separate, independent right to "remove" vegetation from the easement by any means they choose. *Corder I* at ¶ 41-42.

{¶29} An appellate court may affirm a legally correct judgment of a trial court on different reasoning than that used by the trial court. *Fontanarosa v. Connors*, 7th Dist. Mahoning No. 20 MA 0031, 2021-Ohio-2346, ¶ 26. In *Corder I*, we determined that the phrase "trim, cut and remove" contained in the easements was ambiguous. The trial court determined that the easements were unambiguous in not allowing for the use of herbicides. While we still find the disputed phrase is ambiguous, we agree with the trial court that the easements do not allow for the use of herbicides because the ambiguity in this case must be resolved in favor of Appellees. Finding no basis in law or fact for Appellant's assignment of error, we overrule it in its entirety and affirm the judgment of the trial court.

Conclusion

{¶30} The trial court, on remand of this case from the Ohio Supreme Court, interpreted the phrase "trim, cut and remove" in three related public utility easements. The issue in this declaratory judgment action was whether the easements allowed for the use of herbicides to control vegetation within the easements. The trial court held that the easements unambiguously did not allow for the use of herbicides. Appellant presented a single assignment of error challenging the trial court's decision to grant summary judgment to Appellees. We agree with the judgment of the trial court, based on slightly different reasoning. We find that the phrase "trim, cut and remove" is ambiguous and that

the ambiguity must be resolved in Appellees' favor. The easements do not allow for the use of herbicides to control vegetation in the easements. Appellant's assignment of error is overruled and the judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Harrison County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.