CITIZENS AGAINST OVERHEAD POWER LINE CONSTRUCTION ET AL. *v.* CONNECTICUT SITING COUNCIL
(AC 33362)

Robinson, Espinosa and Bishop, Js.

Argued April 10—officially released December 11, 2012

(Appeal from Superior Court, judicial district of New Britain, Cohn, J.)

Matthew C. McGrath, for the appellants (named plaintiff et al.).

Robert L. Marconi, assistant attorney general, with whom, on the brief, was *George Jepsen*, attorney general, for the appellee (named defendant).

Anthony M. Fitzgerald, with whom, on the brief, was *Kurtis Z. Piantek*, for the appellee (defendant Connecticut Light and Power Company).

Victoria P. Hackett, staff attorney, with whom, on the brief, was *Elin Swanson Katz*, consumer counsel, for the appellee (defendant office of consumer counsel).

Opinion

ESPINOSA, J. The plaintiffs Citizens Against Overhead Power Line Construction (association) and Richard M. Legere[1] appeal from the judgment of the Superior Court granting the motion to dismiss in favor of the defendants, the Connecticut Siting Council (siting council), the office of consumer counsel (consumer counsel) and the Connecticut Light & Power Company (power company). The plaintiffs claim that the court improperly determined that they lacked standing to bring the present action. The defendants claim that we need not reach the issue of standing because the plaintiffs failed to appeal to the Superior Court from a final decision by the siting council. We agree with the defendants. Accordingly, we affirm the judgment of the Superior Court.

The following undisputed facts are relevant to our consideration of this appeal. On October 20, 2008, the power company applied to the siting council for certificates of environmental and public need for the construction, operation and maintenance of the Connecticut portion of the power company's Connecticut Valley Electric Transmission Reliability Projects (state project). The state project consisted of two component projects, the Greater Springfield Reliability Project (Springfield project) and the Manchester to Meekville Junction Circuit Separation Project (Manchester project). The siting council considered both aspects of the state project together under docket number 370A.

The power company designed the state project to cure deficiencies in existing electricity transmission lines in north-central Connecticut and the greater Springfield area. The siting council observed that the state project spanned both areas because the transmission systems of the two areas were interconnected. The siting council explained: "From the point of view of transmission, Greater Springfield and the adjacent portion of north-central Connecticut are effectively the same load area. Since key transmission lines in the system serving Greater Springfield terminate at substations in Connecticut, the resolution of Springfield area problems necessarily involves improvement to parts of Connecticut's electric grid as well. At the same time, the need to resolve these Springfield area problems offers an opportunity to reinforce the reliability of electric supply within north-central Connecticut, and improve the power transfer capacity between Massachusetts and Connecticut."

During the proceedings, the siting council granted party status to both the consumer counsel and the association. The association is an unincorporated group of individuals, including Legere, who own property in towns affected by the Springfield project portion of the

state project.

On March 16, 2010, the siting council issued its decision on the power company's application. The siting council, as a matter of procedure, generally issues a decision in three separate but related documents: (1) its findings of fact setting forth the background information underlying the application, (2) an opinion detailing the siting council's consideration of the application, and (3) a decision and order summarizing the action of the siting council on the application. In this case, the siting council issued one set of findings of fact but a separate opinion and decision and order for the Springfield project and the Manchester project. All documents were labeled with docket number 370A. The siting council granted the power company's application with respect to the Springfield project, but it denied without prejudice the application with respect to the Manchester project.

On April 7, 2010, the power company petitioned the siting council for reconsideration, which the siting council granted. In connection with the petition for reconsideration, the siting council heard additional testimony concerning the Manchester project. On July 20, 2010, the siting council issued its findings of fact, opinion and decision and order on the petition for reconsideration and granted the power company's application with respect to the Manchester project. The findings of fact, opinion and decision and order following reconsideration were issued under the docket number 370A-MR. The siting council's decision and order listed the association as a party to the proceedings on the petition for reconsideration.

On May 7, 2010, the plaintiffs filed the operative complaint in the Superior Court, appealing the March 16, 2010 decision of the siting council. The power company filed a motion to dismiss, alleging, among other things, that (1) the plaintiffs did not take their appeal from a final decision of the siting council and (2) the plaintiffs were not statutorily or classically aggrieved by the decision of the siting council.

On November 22, 2010, the court issued an order providing that "[t]he motion to dismiss is denied on the issue of subject matter jurisdiction ('not from a final decision') but as to the issue of aggrievement the matter is set down for an evidentiary hearing . . . ." In an articulation issued January 21, 2011, the court stated: "The question here is not whether the plaintiffs were permitted to wait until a new ruling was issued by the siting council on [the power company's] granted motion to reconsider; indeed, the plaintiffs were allowed to wait. See Public Acts 2006, No. 06-32; General Statutes § 4-183. Rather, the question is whether the court retains jurisdiction over this present May 7, 2010 appeal despite the fact that it was filed before the agency issued its opinion on reconsideration.

"Public Act 06-32 amended § 4-183 (c) in order to confer subject matter jurisdiction over an appeal if taken within forty-five days of a reconsidered decision. Specifically, it allows for an appeal (1) [w]ithin forty-five days after mailing of the final decision under section 4-180 . . . *or* (2) within forty-five days after the agency denies a petition for reconsideration of the final decision . . . *or* (3) within forty-five days after mailing of the final decision made after reconsideration . . . . The purpose of Public Act 06-32 was to correct the situation where an appeal on certain discrete issues, not reconsidered by an agency, would often be considered untimely if filed concurrently with the appeal of the reconsideration. The purpose was not to penalize an appellant who filed an appeal before reconsideration was completed by the agency.

"The appeal at issue in this case only concerns Suffield and associated towns, not the subject of [the power company's] motion to reconsider. Thus, the consideration of the appeal is not affected by the [siting council's] July 20 reconsideration decision." (Emphasis in original; internal quotation marks omitted.)

The court heard oral argument and received evidence on the question of whether the plaintiffs were aggrieved by the decision of the siting council. In a memorandum of decision issued March 24, 2011, the court stated that the plaintiffs had not been aggrieved by the decision of the siting council and, therefore, lacked standing to bring the present action. Accordingly, the court granted the motion to dismiss as to all parties. The plaintiffs filed the present appeal on April 13, 2011.

On appeal, the defendants renew their claim that the plaintiffs failed to appeal from a final decision of the siting council. The defendants assert that, pursuant to General Statutes §§ 4-181a (a) (4)[2] and 4-183,[3] the siting council's July 20, 2010 decision was the only final decision from which the plaintiffs properly could bring an appeal. We agree.

Whether the siting council's March 16, 2010 decision is a final decision from which the plaintiffs may appeal hinges on the operation of §§ 4-181a (a) (4) and 4-183 (c) (1). Accordingly, this case presents a question of statutory interpretation, over which our review is plenary. "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case." (Internal quotation marks omitted.) *Brouillard* v. *Connecticut Siting Council*, 133 Conn. App. 851, 855, 38 A.3d 174, cert. denied, 304 Conn. 923, 41 A.3d 662 (2012). General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other

statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

We conclude that, pursuant to the plain and unambiguous text of both §§ 4-181a (a) (4) and 4-183 (c), the only decision from which the plaintiffs properly could have appealed was the siting council's July 20, 2010 decision. In reaching this determination, we first consider the text of § 4-181a (a) (4), which provides in relevant part that "an agency decision made after reconsideration pursuant to this subsection shall become *the* final decision in the contested case *in lieu of* the original final decision for purposes of any appeal under the provisions of section 4-183, including, but not limited to, an appeal of (A) any issue decided by the agency in its original final decision that was not the subject of any petition for reconsideration or the agency's decision made after reconsideration . . . ." (Emphasis added.) General Statutes § 4-181a (a) (4). The siting council's July 20, 2010 decision reconsidered, and ultimately reversed, aspects of the March 16, 2010 decision relating to the Manchester project portion of the state project. The reconsideration did not address issues regarding the Springfield project portion of the state project. Therefore, this situation is governed by § 4-181a (a) (4) (A).

In this situation, § 4-181a (a) (4) provides by its plain and unambiguous terms that the agency decision made after reconsideration—in this case, the July 20, 2010 decision—replaces the original agency decision as the sole final decision of the agency. Even though the July 20, 2010 decision resolved only those issues relating to the Manchester project portion of the state project, it was the only decision from which the plaintiffs properly could have brought an appeal to the Superior Court.

This conclusion is consistent with the plain and unambiguous language of § 4-183 (c), which sets forth the time to appeal from the final decision of an agency. Section 4-183 (c) provides in relevant part: "(1) Within forty-five days after mailing of the final decision under section 4-180 or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, or (2) within forty-five days after the agency denies a petition for reconsideration of the final decision pursuant to subdivision (1) of subsection (a) of section 4-181a, or (3) within forty-five days after mailing of the final decision made after reconsideration pursuant to subdivisions (3) and (4) of subsection (a) of section 4-181a or, if there is no mailing, within forty-five days after personal delivery of the final decision made after reconsideration pursuant to said subdivisions, or (4) within forty-five days after the expiration of the ninety-day period required under subdivision (3)

of subsection (a) of section 4-181a if the agency decides to reconsider the final decision and fails to render a decision made after reconsideration within such period, *whichever is applicable and is later*, a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision . . . ." (Emphasis added.) Section 4-183 (c) (1) provides that, if there is no petition for reconsideration, an appeal shall be brought within forty-five days after the mailing of the final decision. Subdivisions (2) through (4) of § 4-183 (c) lay out the applicable times during which an appeal of a decision that was the subject of a petition for reconsideration may be brought.

The court determined that the disjunctive structure of § 4-183 (c)—subdivisions (1) through (4) are separated by the word "or"—indicated that the statute gives plaintiffs a choice of when to appeal an agency decision. That is, a plaintiff could choose to appeal an agency decision immediately under § 4-183 (c) (1) or could choose to appeal after the agency denied, granted or failed to act on a petition for reconsideration. We do not agree.

We conclude that § 4-183 (c) clearly lists four distinct scenarios and provides that a plaintiff shall appeal within whichever time frame is applicable and occurs latest. Although this court has stated that, generally, "[t]he last antecedent rule provides that qualifying phrases, absent a contrary intention, refer solely to the last antecedent in a sentence"; *Connecticut Ins. Guaranty Assn.* v. *Drown*, 134 Conn. App. 140, 151, 37 A.3d 820, cert. granted on other grounds, 305 Conn. 908, 44 A.3d 183 (2012); our Supreme Court has cautioned that "where a qualifying phrase is separated from several phrases preceding it by means of a comma, one may infer that the qualifying phrase is intended to apply to all its antecedents, not only the one immediately preceding it." *State* v. *Rodriguez-Roman*, 297 Conn. 66, 76, 3 A.3d 783 (2010). The phrase, "whichever is applicable and is later," appears only in § 4-183 (c) (4), but it is separated from the language that precedes it by a comma. Furthermore, § 4-183 (c) (4) does not present alternatives to which "whichever is applicable and is later" logically could apply. Therefore, we conclude that the only reasonable interpretation of § 4-183 (c) is that it lists four alternative time frames during which an appeal of an agency final decision may be brought, and that, in any given circumstance, only one such time frame will apply.

This reading of § 4-183 (c) is harmonious with our interpretation of § 4-181a (a) (4). Because § 4-181a (a) (4) provides that a reconsidered agency decision replaces the original agency decision as the sole final decision for purposes of an appeal, it follows logically that § 4-183 (c) does not provide a plaintiff with options of when an appeal may be taken. Rather, if an agency

decision has not been the subject of a petition for reconsideration, under § 4-183 (c) (1), an appeal shall be brought within forty-five days of the mailing of such decision. If, however, the decision is the subject of a petition for reconsideration, the plaintiff shall bring an appeal within the time frame dictated by § 4-183 (c) (2), (3) or (4), depending on whether the agency denied, granted or failed to act on the petition for reconsideration. In this way, §§ 4-181a (a) (4) and 4-183 (c) work in concert to prevent the piecemeal appeal of an agency decision before the final resolution of all issues presented during the agency proceedings. In the present case, the plaintiffs failed to appeal from the July 20, 2010 decision, which, under § 4-181a (a) (4), was the only final decision for purposes of an appeal.[4] Accordingly, the Superior Court lacked subject matter jurisdiction over their claims.

The judgment is affirmed.

In this opinion ROBINSON, J., concurred.

[1] Legere is the executive director of the association. Angela Ciottone, an attorney, was added as a party plaintiff on July 23, 2010, but she participated only in the pretrial proceedings and is not a party to this appeal. Accordingly, in this opinion, we refer to the association and Legere as the plaintiffs.

[2] General Statutes § 4-181a (a) (4) provides: "Except as otherwise provided in subdivision (3) of this subsection, an agency decision made after reconsideration pursuant to this subsection shall become the final decision in the contested case in lieu of the original final decision for purposes of any appeal under the provisions of section 4-183, including, but not limited to, an appeal of (A) any issue decided by the agency in its original final decision that was not the subject of any petition for reconsideration or the agency's decision made after reconsideration, (B) any issue as to which reconsideration was requested but not granted, and (C) any issue that was reconsidered but not modified by the agency from the determination of such issue in the original final decision."

[3] General Statutes § 4-183 provides in relevant part: "(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal. . . .

"(c) (1) Within forty-five days after mailing of the final decision under section 4-180 or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, or (2) within forty-five days after the agency denies a petition for reconsideration of the final decision pursuant to subdivision (1) of subsection (a) of section 4-181a, or (3) within forty-five days after mailing of the final decision made after reconsideration pursuant to subdivisions (3) and (4) of subsection (a) of section 4-181a or, if there is no mailing, within forty-five days after personal delivery of the final decision made after reconsideration pursuant to said subdivisions, or (4) within forty-five days after the expiration of the ninety-day period required under subdivision (3) of subsection (a) of section 4-181a if the agency decides to reconsider the final decision and fails to render a decision made after reconsideration within such period, whichever is applicable and is later, a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision at its office or at the office of the Attorney General in Hartford and file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides or, if that person is not a resident of this state, with the clerk of the court for the judicial district of New Britain. . . ."

[4] The dissent concludes that the word "may" in § 4-183 (a), as well as the "purpose of the 2006 amendments to the statute," largely govern an analysis of the timeliness of the present appeal. As stated previously, § 4-183 (a) provides in relevant part: "A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision *may* appeal to the Superior Court as provided in this section. . . ." (Empha-

sis added.) General Statutes § 4-183 (a). We interpret this prefatory language as it is written, merely to provide a right to appeal that is in accordance with the remainder of § 4-183. Mindful of the substantive distinction between "may" and "shall," we apply the word "may" to the words that immediately follow it in the statute. Thus, we interpret the statute to convey that the bringing of an appeal from a final agency decision, in accordance with the provisions of § 4-183, is a discretionary act. An appeal is timely, however, only if it is taken in accordance with § 4-183 (c) (1), which, by its terms, governs the timeliness of an appeal.

Additionally, we disagree that the plain language of the statute reflects that, by amending § 4-183 (c) (1), the legislature intended merely to "extend the permissive time for taking an appeal." As stated previously in this opinion, subsection (c) addresses four events directly related to an agency's final decision, and unambiguously provides that an appeal may be taken from "whichever is applicable and is later . . . ." General Statutes § 4-183 (c) (4). In our view, to permit an appellant, in its discretion, to bring an appeal from *any* of these four events would effectively render the phrase, "whichever is applicable and is later," meaningless. In our interpretation of statutory language, we must presume that "the legislature did not intend to enact meaningless provisions. . . . [S]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant . . . ." (Internal quotation marks omitted.) *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 303, 21 A.3d 759 (2011).

Last, the dissent suggests that the plaintiffs should be permitted to bring an appeal from the March 16, 2010 decision of the agency because they lacked any interest in the issues addressed in the motion for reconsideration filed by the power company. As the dissent notes, "[t]he motion for reconsideration was filed by [the power company] in response to the [siting council's] denial of its application regarding a geographic area of no immediate interest to the [plaintiffs]." Even if we assume that this is accurate, it does not follow that the plaintiffs necessarily lacked any "legal interest" in the reconsidered decision, as stated by the dissent. There is no dispute that the siting council considered both aspects of the state project together under the same docket number. Although the siting council ultimately issued separate decisions and orders for the Springfield and Manchester projects, it nonetheless issued one set of findings of fact with regard to both projects. Because the siting council granted the motion for reconsideration, there remained a substantial likelihood that its reconsidered decision affected its findings concerning both projects and, thus, the decision at issue in the plaintiffs' appeal. The statutes at issue expressly provide a right to appeal from a "final decision" of an agency. General Statutes §§ 4-181a (a) (4) and 4-183 (a). There is no statutory support for the notion that a decision under reconsideration is the proper subject of an appeal by one of several parties aggrieved by an agency's original final decision. Instead, the proper subject of an appeal is the agency decision made after reconsideration, which "shall become the final decision in the contested case in lieu of the original final decision for purposes of any appeal . . . ." General Statutes § 4-181a (a) (4).