Short Argument for Court

Background: In 1947 Sherrill Kent purchased a beach lot from Emerson Swift on the west side of Lake Willoughby in Westmore, VT. Two natural boundaries, the lake front and Crescent Brook, define the southeast and southwest sides of the property. The other two sides are defined by two straight boundaries going from the water's edge to a back boundary [referred to also as a border], which is parallel to the beach, and thence to the brook.

The Swift Family Trust [SFT] has beach property contiguous with the Kent beach such that the Kent beach is between the SFT beach and the brook. The Tanner Family Trust [TFT] has property that is contiguous with the back boundary. The Tanner family is an extended family of the Swifts, and both are named as Defendants in this lawsuit.

In 1971 when grantee Sherrill Kent discovered that the Kent stakes had disappeared, he repeatedly impressed on family and extended family members that the boundary on the beach was marked by two cedar trees and that the back boundary passed between two boulders.

Dispute: There are disputes both on the beach and the back border. On the beach the Defendants are claiming a 75-foot frontage. Plaintiff argues that the SFT has approximately 65 feet and that their claim cuts 10 feet into the Kent beach. On the back border, Plaintiff asserts that Defendants have moved the back border 50 to 60 feet closer to the beach. The claims of the Defendants are published in deeds and maps recorded in the Land Records from 1970 to the present.

See Diagram 1 for the land description in the 1947 Kent deed [Book 19, Page 21] in Land Records Diagram 1 also describes the three boundaries and the monuments (stakes) in contention. Plaintiff holds that the Kent-Swift common boundary starts from Stake C at two cedar trees on the beach. Swifts claim Stake B, which was set in 2012 and which is 10 feet closer to the brook. Stake C goes 438' on a bearing of N 33 W to Stake E (missing) on the back border between two massive boulders and thence 235' on a bearing of S 53 W to Stake F (missing) in the middle of the brook. Distances given are surveyed [Diagram 2]. Swifts hold that the boundary is defined by Stake B which goes about 400 feet to Stake A and thence about 190 feet to the brook. Stake A was discovered in 2012 by Shane Clark of Truline Land Surveyors of St. Johnsbury, VT. Defendants have replaced Stake D with Stake A. Stake D was referenced in 4 deeds from 1971 to 1988. Stake A would cut off even more of the Kent property.

The Evidence for the Beach: The evidence for the beach is based on one primary observation: Only ~265 feet are available for two lots of 100 feet on each side of the brook, leaving ~ 65 feet for the SFT beach [Diagram 3]. Where R defines the other Swift boundary with Willis, the surveyed distance from C to R is 65.8'.

Stake C: Stake C is very secure. It was discovered in 2013 and documented by surveyor Nathan Nadeau of Horizons Engineering, Inc., of Newport, VT. An iron pipe was cavitated under a 5-inch-wide cedar root of one of the two cedar trees held traditionally to mark the boundary on the beach. The condition of the iron pipe was commensurate with having been set in 1947 [Diagram 4].

The Evidence for the Back Border: Considerable information may be extracted from the 1947 Swift Map from the notebook of Emerson Swift. One piece will suffice: a very faint line with arrow heads on each end extending from the Crescent Brook to the Spring Brook is accompanied by an equally faint 200 [Diagram 5]. It appears the line and the 200 had been erased. Using 200' as a scale, the distance from F to E is calculated to be 233 feet compared to the survey distance of 235 feet.

Logically, the FE distance of 233 feet alone with the strength of Stake C is sufficient to end the debate. The FE boundary passes between two boulders as declared by Sherrill Kent [one might ask how Kent knew about the boulders]. The location of the back boundary is locked in place, and thus the distance of 438' from E to C is also locked in place. The 1947 Swift Map shows only one back boundary, and that boundary is defined by the locations of the Mack Triangle and the Crescent Brook Cascade. Thus, the Kent boundaries are defined as FEC, and all Swift and Tanner claims are eliminated. See Diagram 6 for a Summary of Evidence.

This short presentation ends with the last paragraph, but the 200-scale calculation is not alone. Four other independent methods for calculating FE have a range of 231 to 235 feet, and three methods each have been deduced for the CE and CR distances. Over a period of 50 years Swifts have manipulated 14 monuments for illegitimate gain, and those efforts are not restricted to the Kent property monuments.