



INTERIOR BOARD OF INDIAN APPEALS

Estate of George Asepermy, Sr.

28 IBIA 50 (06/07/1995)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF GEORGE ASEPERMY, SR. : Order Affirming Decision  
:  
: Docket No. IBIA 94-183  
:  
: June 7, 1995

This is an appeal from a July 20, 1994, order denying petition for rehearing issued by Administrative Law Judge Richard L. Reeh in the estate of George Asepermy, Sr. (decendent). Appellant is Ruth Asepermy Myers, a daughter of decendent. For the reasons discussed below, the Board affirms Judge Reeh's order.

Decendent died testate on April 3, 1992. Judge Reeh held a hearing in his estate on October 20, 1993. Appellant's attorney attended the hearing, stating that appellant wished to challenge decendent's will but had not had time to prepare her arguments and evidence. Judge Reeh agreed to schedule a supplemental hearing for the purpose of taking evidence concerning appellant's will challenge.

On November 12, 1993, appellant's attorney wrote to Judge Reeh, stating that appellant was withdrawing her challenge to the will. Judge Reeh issued an order approving the will on January 4, 1994. Appellant, no longer represented by an attorney, filed a petition for rehearing. She contended that decendent had been coerced into preparing his will. She also contended that she should have been given an opportunity to confer with decendent before he prepared the will.

Judge Reeh denied the petition on July 20, 1994, noting that appellant had explicitly withdrawn her challenge to the will and holding that the arguments she was now attempting to make should have been presented prior to the time the order approving will was issued. He also rejected appellant's arguments on the merits.

On appeal to the Board, appellant contends, *inter alia*, that decendent lacked testamentary capacity when he executed his will and that he was under undue influence "by whoever had custody of him" at that time. She also contends that she is not familiar with probate procedures.

There is no doubt that appellant had knowledge of the probate hearing in this matter, because her attorney attended that hearing on her behalf. At her attorney's request, Judge Reeh agreed to schedule a supplementary hearing so that appellant could present her arguments against approval of decendent's will. Instead of presenting her arguments at the offered

supplementary hearing, however, appellant withdrew her challenge to the will. Given these facts, appellant cannot now plead ignorance of probate procedures.

Appellant's present contentions, like her contentions in her petition for rehearing before Judge Reeh, are the barest of allegations, supported by no evidence whatsoever. Even if she had presented some evidence in her petition for rehearing, however, rehearing was properly denied, given appellant's failure to present her arguments and evidence to Judge Reeh prior to the initial decision in this matter. It is well established that a rehearing for the purpose of presenting additional evidence is appropriate only in a case where the evidence could not, with reasonable effort, have been presented at the original hearing. Estate of Howard Little Charley, 18 IBIA 335 (1990), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Reeh's January 4, 1994, and July 20, 1994, orders are affirmed.

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Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge