STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of IESHA THOMPSON and KADAJA MIANNE RAY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

NORITA RAY,

Respondent-Appellant,

and

MINUS THOMPSON and EDWIN RAY,

Respondents.

UNPUBLISHED
February 27, 1998

No. 200102
Berrien Juvenile Court
LC No. 95-000030-NA

In the Matter of IESHA THOMPSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MINUS THOMPSON,

Respondent-Appellant,

and

NORITA RAY,

No. 202692
Berrien Juvenile Court
LC No. 95-000030-NA

Respondent.

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

PER CURIAM.

In docket number 200102, respondent Norita Ray appeals by right an order terminating her parental rights to Iesha Thompson (born 8/3/91) and Kadaja Mianne Ray (born 3/11/95) pursuant to MCL 712A.19(3)(b)(1), (g), (h) and (j); MSA 27.3178(598.19b)(3)(b)(1), (g), (h) and (j). In docket number 202692, respondent Minus Thompson appeals by right an order terminating his parental rights to Iesha Thompson pursuant to MCL 712A.19b(3)(g) and (h); MSA 27.3178(598.19b)(3)(g) and (h). Respondents Ray and Thompson filed separate appeals of right, which were consolidated for our review. We affirm.

Respondent Ray first claims she was denied her right to a jury drawn from a representative cross section of the community in that African-Americans were systematically excluded from the jury array. We disagree. To establish a prima facie violation of the fair-cross-section requirement, respondent Ray must show "'(1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.'" *People v Hubbard (After Remand)*, 217 Mich App 459, 473; 552 NW2d 493 (1996), quoting *Duren v Missouri*, 439 US 357, 364; 99 S Ct 664; 58 L Ed 2d 579 (1979). Respondent Ray satisfied the first prong of the test set forth in *Hubbard*. African-Americans are considered a constitutionally cognizable group for Sixth Amendment fair-cross-section purposes. *United States v Ashley*, 54 F3d 311, 313 (CA 7, 1995); *Hubbard, supra*. However, there is no support in the record for the latter two prongs set forth in *Hubbard*. Respondent Ray presented no evidence to indicate that the representation of African-Americans in venires from which juries are selected was not fair and reasonable in relation to the number of such persons in the community. Nor did she present evidence to indicate that any underrepresentation was due to systematic exclusion of African-Americans in the jury-selection process. *Hubbard, supra* at 473, 481. Therefore, respondent Ray did not present a prima facie violation of the fair-cross-section requirement.

Next, respondent Ray claims that her due process rights were violated by the juvenile court's failure to order that she be transported from federal prison in Oklahoma for the adjudicatory and termination hearings. We disagree. Although respondent Ray's interest in her parental rights was a compelling one, the risk of an erroneous deprivation of that interest was not increased by her absence at the adjudicatory and termination hearings. *In re Vasquez*, 199 Mich App 44, 48; 501 NW2d 231 (1993). Moreover, the financial and administrative burden on the state to transport respondent Ray back and forth to the adjudicatory and administrative hearings would have been significant. *Id.* Under these circumstances, the failure to transport respondent Ray to the hearings was not a violation of her due process rights. *Id.*

Respondent Ray also claims that the juvenile court erred in denying her request to depose or subpoena a Dr. Messenger. Respondent Ray claims that Dr. Messenger would have testified about the severity of Iesha's burns. We have been unable to locate in the record any request by respondent Ray to depose or subpoena Dr. Messenger. Nor have we been able to find an offer of proof with regard to the substance of Dr. Messenger's testimony. Hence, we deem this issue to be waived. *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995).

Next, respondent Ray argues that the prosecutor improperly commented during closing argument that she did not produce evidence that Iesha received medical treatment until she arrived in Michigan. We disagree. The evidence presented at the adjudicatory hearing was undisputed that respondent Ray did not seek medical treatment for the burns sustained by Iesha on March 23, 1995, until she arrived in Benton Harbor, Michigan on March 27, 1995. Therefore, the prosecutor's remarks were nothing more than a permissible comment on the evidence presented at the adjudicatory hearing. *People v Bahoda*, 448 Mich 261, 266-267, 282; 531 NW2d 659 (1995); *People v Fisher*, 193 Mich App 284, 291; 483 NW2d 452 (1992).

Next, respondent Ray points out that Norm Perry, trial counsel for Jimmie Anderson, was not present for a portion of the voir dire conducted at the beginning of the adjudicatory hearing. Respondent Ray claims that because attorney Perry "did not hear [a portion of] the voir dire" he "therefore excused some of the jurors who other attorneys had felt were going to be more favorable to the Respondents' positions." Respondent Ray claims that she was prejudiced by attorney Perry's failure to be present for the entire voir dire because jurors she had wanted on the panel were excused by attorney Perry. We find no merit to this claim. First, respondent Ray does not specify which jurors who were allegedly excused by attorney Perry would have been "more favorable" to her position. In fact, the record reflects that attorney Perry only exercised one peremptory challenge during voir dire. Further, respondent Ray provides no support, and there is no indication in the record, that this juror was somehow favorably inclined toward her. Moreover, attorney Perry had no duty to choose jurors who were favorable to respondent Ray, and respondent Ray had no legal power to control the actions of the attorneys for the other respondents in this case. Respondent Ray's claim in this regard is without merit.

Next, respondent Ray argues that the juvenile court erred in denying her request to provide her with a copy of the transcript of the Dr. Max Allen criminal trial held in district court. We find that respondent Ray was not prejudiced by the court's denial of her request. Although the court refused to provide her with a copy of the transcript of the Dr. Max Allen trial, it did give her trial counsel the opportunity to listen to the tapes of the trial.

Lastly, respondent Ray claims that the juvenile court erred in deciding to admit petitioner's exhibits nine through fifteen because there was no opportunity to "examine the preparers of the various attachments to the report[s]." Assuming that the court erred in admitting the exhibits in question, it is clear from the sequence of events at the termination hearing that respondent Ray was not prejudiced by her inability to cross-examine the preparers of the various attachments. The exhibits were admitted only after the juvenile court had decided to terminate respondent Ray's parental rights to Iesha and Kadaja.

As the court indicated, the exhibits were only admitted to assist the court in entering the necessary orders regarding the parents whose rights had not been terminated. Thus, respondent Ray was not prejudiced by the juvenile court's decision to admit exhibits nine through fifteen.

Respondent Thompson argues that his attorney should have been allowed more time to obtain a federal writ of habeas corpus to allow him to be present at the adjudicatory hearing. In other words, respondent Thompson claims that the juvenile court erred in denying his motion for an adjournment of the adjudicatory hearing. We disagree. The children were brought into care in March of 1995. Between April of 1995 and June of 1996, when the adjudicatory hearing was finally held, there were at least three adjournments of the hearing. In light of the previous adjournments of the adjudicatory hearing and the fact that at the time of respondent Thompson's request for an adjournment the minor children had already been in foster care for over fourteen months, the juvenile court did not abuse its discretion in denying the motion for an adjournment. *Cummings v Detroit*, 151 Mich App 347, 351; 390 NW2d 666 (1986). Respondent Thompson's claim that his trial attorney's failure to obtain a federal writ of habeas corpus constituted ineffective assistance of counsel is not supported by the record. *People v Harris*, 201 Mich App 147, 154; 505 NW2d 889 (1993). Further, even if trial counsel's failure to secure a federal writ of habeas corpus was error, the error was not prejudicial to respondent Thompson. He was well-represented by counsel at the adjudicatory hearing, he was able to listen to the majority of the hearing over a speaker phone, and he did not indicate below and does not indicate on appeal what evidence he would have provided on his own behalf if he was present at the adjudicatory hearing that would have made a difference in the outcome of the case. *People v Pickens*, 446 Mich 298, 327; 521 NW2d 797 (1994).

Respondent Thompson argues that the juvenile court effectively precluded him from participating in the adjudicatory hearing; this claim is without merit. Respondent Thompson was allowed to listen to the proceedings over the speaker phone, he was represented by counsel during the adjudicatory hearing, and he was informed by the juvenile court that he would be allowed to confer with his attorney during breaks in the proceedings.

Lastly, respondent Thompson claims that the juvenile court indicated that the issue of termination of parental rights would not be discussed or dealt with at the adjudicatory hearing but would instead be the subject of the subsequent dispositional hearing. According to respondent Thompson, the court changed its position after the adjudicatory hearing and indicated that the parties would not be allowed to refute the evidence regarding the statutory grounds for termination at the dispositional hearing. Basically, respondent Thompson claims that the juvenile court failed to comply with the requirements of MCR 5.974(D). We disagree. First, the amended petition contained a request for termination of the parental rights of respondents Ray and Thompson. MCR 5.974(D)(1). Next, the trier of fact found by a preponderance of the evidence that the minor children came under the jurisdiction of the juvenile court. MCR 5.974(D)(2). Respondent Thompson does not dispute that the juvenile court then found on the basis of clear and convincing legally admissible evidence introduced at the adjudicatory hearing that the facts alleged in the amended petition justified termination of parental

rights. MCR 5.974(D)(3). Subsequently, the court decided that termination of respondent Thompson's parental rights was in the best interest of Iesha. MCR 5.974(D)(3). Therefore, it is clear that the court followed the procedure outlined in MCR 5.974(D). Moreover, contrary to respondent Thompson's claim, the court repeatedly instructed the parties that it would follow the procedure outlined in MCR 5.974(D).

Affirmed.

/s/ Jane E. Markey
/s/ Martin M. Doctoroff
/s/ Michael R. Smolenski