

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ROBERT WALTERS, JR.,
CAMARON WALTERS and JULIE MARIE
WALTERS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
December 12, 1997

v

No. 205465
Sanilac Juvenile Court
LC No. 96-032827 NA

ROBERT L. WALTERS, SR.,

Respondent-Appellant,

and

ROBIN WALTERS,

Respondent.

Before: Griffin, P.J. and Markman and Whitbeck, JJ.

PER CURIAM.

Respondent Robert L. Walters, Sr., appeals as of right from the juvenile court order terminating his parental rights to the minor children under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first contends that, during the jurisdictional phase of the trial, the juvenile court erred in denying his motions for an adjournment and for a mistrial.

A motion to adjourn must be based on good cause and a court, in its discretion, may grant an adjournment to promote the cause of justice. *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991). The conduct of a trial is within the control of the presiding judge and does not

result in error warranting reversal unless there is some proof of prejudice. *Schutte v Celotex Corp*, 196 Mich App 135, 142; 492 NW2d 773 (1992). Respondent's motion was based on the facts that some of the prospective jurors had made comments about the delay in starting the trial and had seen him in handcuffs when he was brought into the courtroom. Given that the court questioned the prospective jurors as to whether the morning's delay would affect their ability to render a fair and impartial verdict and none of them indicated that it would, plus the fact that respondent has not shown that any of the disgruntled prospective jurors were actually impaneled, this Court cannot find that the juvenile court abused its discretion in denying the motion to adjourn on the basis of the delay. Because the court did not specifically address the shackling issue, there is nothing for this Court to review. *Michigan State AFL-CIO v Civil Service Comm (After Remand)*, 208 Mich App 479; 528 NW2d 811 (1995), rev'd on other grounds 455 Mich 720; 566 NW2d 258 (1997). In any event, respondent has not shown that he was prejudiced by the fact that the jurors may have seen him in handcuffs, given that this was not a criminal proceeding and the jurors were informed that he had recently been sentenced to a lengthy prison term. Cf. *People v Robinson*, 172 Mich App 650, 654; 432 NW2d 390 (1988).

The decision whether to grant or deny a mistrial is within the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion resulting in a miscarriage of justice. *Schutte, supra*. During the trial, one juror was dismissed after he realized that he was vaguely familiar with respondent's home. The juror was a school bus driver, the house was on his route, and he recalled stopping there to pick up a child. Respondent moved for a mistrial on the ground that the juror's sudden disappearance would have a negative impact on the remaining jurors. Given the speculative basis for respondent's motion and the fact that the court instructed the jury that the other juror had to be excused, this Court cannot find an abuse of discretion.

Petitioner presented clear and convincing evidence that respondent failed to provide proper care or custody for the children and, in light of his failure to improve despite being offered "virtually every service available" and his recent incarceration for a minimum term of ten years, there was no reasonable likelihood that he would be able to provide proper care and custody within a reasonable time considering the ages of the children. Therefore, the juvenile court's decision to terminate respondent's parental rights was not clearly erroneous. *In re Hall-Smith*, 222 Mich App 470; 564 NW2d 156 (1997).

Affirmed.

/s/ Richard Allen Griffin

/s/ Stephen J. Markman

/s/ William C. Whitbeck