

IN THE COURT OF APPEALS OF IOWA

No. 6-600 / 06-0993
Filed August 23, 2006

**IN THE INTEREST OF W.R. and B.R.,
Minor Children,**

**S.R., Mother,
Appellant,**

**W.R., SR., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
Juvenile Judge.

A mother and father appeal the termination of their parental rights to their
children. **AFFIRMED.**

Timothy J. Tupper, Davenport, for appellant-mother.

Robert J. Phelps, Bettendorf, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, William Davis, County Attorney, and Gerda Lane, Assistant
County Attorney, for appellee-State.

Lucy Valainis, Davenport, guardian ad litem for minor children.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

A mother and father appeal the termination of their parental rights to their children. They contend the State failed to prove the grounds for termination by clear and convincing evidence. The father also contends he is being denied effective assistance of appellate counsel. We review these claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The children, ages three and five, have been in foster care since February 10, 2005. They had previously been in foster care for almost three months in late 2003 and early 2004. From February 17, 2004 until February 10, 2005 they had been at home under the supervision of the court and the Department of Human Services.

The mother and father's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(f), (g), and (h) (2005). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination under sections 232.116(1)(f) and (h) only differ in the length of time a child has been removed from the parent's care based on the age of the children. There is no dispute the State has proven the first three elements of these sections in regard to the children. The mother and father instead dispute the State has proven the children cannot be returned to their care without the risk of further adjudicatory harm. Iowa Code §§ 232.116(1)(f)(4), 232.116(1)(h)(4). We disagree.

The children were adjudicated in need of assistance following concerns about the parents' failure to appropriately care for and supervise the children or to provide safe housing. Domestic abuse and the mother's low functioning were

also issues. Although the parents initially made little progress in addressing the concerns about their parenting, they made significant progress following the termination of their parental rights to their daughter in July 2005. Unfortunately, the parents have not maintained this improvement. The father was diagnosed with personality disorder and bipolar disorder in April 2004 by Dr. Stephen G. Kopp of Psychology Associates, Ltd. He refuses to take medication for treatment of his mental health or to participate in therapy. He continues to be emotionally abusive to the mother. His behavior has caused W.R. Jr. to react negatively to unsupervised visits with the parents.

The mother is low functioning as a result of a traumatic brain injury. She has difficulty multitasking and becomes confused when multiple demands are placed upon her. She, like the father, is unable to appropriately and consistently discipline the children.

The evidence shows the parents are unable to meet the children's needs despite the receipt of services to correct the problems that led the children to be adjudicated in need of assistance. The children are at risk of future harm if returned to their parents' care.

The father also contends he is receiving ineffective assistance of appellate counsel because his appellate counsel was not his trial counsel and did not receive the trial transcript with enough time to identify any legal issues on appeal. Under our expedited appeal rules, the petition on appeal had to be filed within fifteen days of the filing of the notice of appeal. Iowa R. App. P. 6.5(2). Counsel claims he received the trial transcript on the fifteenth day.

To establish an ineffective assistance of counsel claim in a termination of parental rights case the father must show deficiency in counsel's performance and actual prejudice. *In the Interest of D.G.*, 704 N.W.2d 888, 891 (Iowa Ct. App. 2005). Our supreme court has rejected the argument that the expedited appeal rules automatically results in deficient performance by appellate counsel. *In re L.M.*, 654 N.W.2d 502, 506 (Iowa 2002) ("Even in the extraordinary situation where trial counsel does not prepare the petition on appeal, the new attorney would most likely be able to consult with trial counsel and the client, as well as be able to review the court file."). Here the father's appellate counsel does not argue he did not have an opportunity to consult with trial counsel or review the court file. Also, as mentioned in *L.M.*, 654 N.W.2d at 560, we review the matter de novo with full access to the entire trial record. The father urges insufficient evidence to prove the children cannot be returned to his custody. We have reviewed the entire record and rejected this argument. We find no prejudice and, accordingly, affirm.

AFFIRMED.