

**IN THE COURT OF APPEALS OF IOWA**

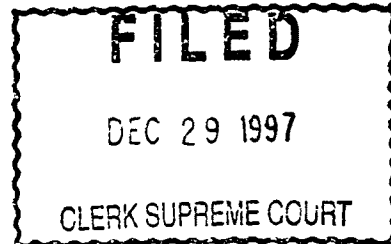
No. 7-646 / 97-0519

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**IN THE INTEREST OF S.K., J.E., and K.E.,  
Minor Children,**

**M.K., Mother,  
Appellee/Cross-Appellant,**

**STATE OF IOWA,  
Appellant/Cross-Appellee.**



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Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, District Associate Judge.

State appeals district court's refusal to terminate parental rights to two children and mother cross-appeals challenging termination of parental rights of a third child.

**AFFIRMED.**

Thomas J. Miller, Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellant.

Jeffrey L. L. Stein of Stein Law Office, Marshalltown, for appellee-mother.

Jeffrey L. Garland of Charnetski, Olson, Lacina, Pendleton & Garland, L.L.P., Grinnell, for appellee-father.

Nancy L. Burk, Toledo, guardian ad litem for minor children.

Heard by Cady, C.J., and Sackett and Streit, JJ.

**SACKETT, J.**

Marla is the mother of three children. The juvenile court terminated her parental rights to her youngest child, Kayla, born in 1990. The State appeals contending Marla's parental rights to all three children should have been terminated. Marla cross-appeals challenging the termination of the parental rights of her youngest child. The children have two fathers, not parties to this appeal. We affirm.

The State contends the juvenile court should have terminated Marla's parental rights to her two older children, Samantha, born in 1986,<sup>1</sup> and John, born in 1988, and the father's parental rights to John.

We review de novo. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1993). The State has the burden of proving the grounds for termination by clear and convincing evidence. *See In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978).

Finding clear and convincing evidence to terminate the parental rights of the two older children, the juvenile court did not terminate finding the children were not in an adoptive placement. The State advances this is not a basis for not terminating Marla's rights to these children.

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<sup>1</sup> The parental rights of Samantha's father were terminated.

The State offers no plan for the children's adoption. It advances, and we recognize, a finding the children will be adopted is not necessary to terminate parental rights. *In re T.C.*, 522 N.W.2d 106, 109 (Iowa App. 1994). The State advances the children need stability and permanency and should not be forced to endlessly suffer parentless limbo in foster care. We agree with this argument. Yet, we fail to see its application to this case. The juvenile court's decision does not leave the children parentless. They will continue to have a loving biological mother even though her alcoholism, which she continues to make serious efforts to control, currently gets in the way of the children being returned to her care. Children whose parental rights are terminated and who are never adopted or have long waits for adoption are the children in parentless limbo.

We cannot on this record find Marla will not conquer her problems with substance abuse. She was at the time of the hearing both employed and engaged in a substance abuse treatment program. The court recognized this and further recognized her relapses gave the court cause to be concerned there may be another relapse. While these factors are not sufficient to negate a finding of clear and convincing evidence supporting termination, they need to be considered in looking to the children's future.

Neither the State, if the mother's parental rights are terminated, nor the mother, if they are not terminated, can promise these two children a stable future with people with whom they have bonded. The juvenile court and this court would be remiss if

we did not consider these factors. The juvenile court has. The juvenile court found there was a close relationship between the children and Marla. They call her their "real mom," are happy to see her, and expect to return to her care. The record supports these findings. The social history prepared for the termination court states, "This worker feels the family has strong interpersonal bonds and that family reunification should continue to be the goal."

The children also have had a long-term relationship with and are bonded to their foster parents. It appears the children will continue in this foster placement, though the foster parents will not adopt.

There are cases where children should not have their parental rights terminated even when grounds for termination exist. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997). We have deferred on the issue to the decision of the trial judge who is closer and more able to observe the parties and the actual family dynamics. *See id.* Severing the biological ties between a child and parent can have serious repercussions to the child. *See In re R.B.*, 493 N.W.2d 897, 899 (Iowa App. 1992).

The love the children have for their mother and the love she has for them, though not measurable, cannot be ignored. *See H.L.B.R.*, 567 N.W.2d at 680. We affirm the trial court's decision not to terminate Marla's parental rights to Samantha and John. In arriving at this conclusion we recognize, as the State and guardian ad litem argue, too many times Marla has failed to give her children the attention and care they deserve. Yet, her children have not given up on her. Marla has argued she

is now on the right track. It is her responsibility to see she stays there.

We affirm also the trial court's refusal to terminate the parental rights of John's father for to do so we would terminate his support obligation.

Marla contends the parental rights to her daughter, Kayla, born in 1990, should not have been terminated. The question is whether there was clear and convincing evidence supporting the termination.

Kayla has been continuously in foster care over eighteen months. She was placed there after findings that Marla had serious problems with substance abuse and was unable to provide the children with a safe environment. During the period of foster care, Marla had a series of problems and made efforts to control her problems. Although Marla was in stable housing and employment and a part of a substance abuse treatment when the hearing was held, she had not followed this path long enough to establish a reasonable basis to believe she would continue.

The disputed issue was whether Kayla could be returned to Marla's care. We agree there is clear and convincing evidence she cannot be returned. *See In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). Kayla is with foster parents to whom she has bonded and who plan to adopt her. She is younger than her siblings. We recognize this adoption splits siblings. Yet, the juvenile court has adequately considered these factors. We affirm the trial court's decision to terminate Marla's parental rights to Kayla.

**AFFIRMED.**