IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-815

Filed: 4 June 2019

Polk County, Nos. 15 JT 22-23

IN THE MATTER OF: L.B., C.B.

Appeal by respondent-mother from order entered 31 May 2018 by Judge Peter B. Knight in Polk County District Court. Heard in the Court of Appeals 9 May 2019.

Feagan Law Firm, PLLC, by Phillip R. Feagan, for petitioner-appellee Polk County Department of Social Services.

Parent Defender Wendy C. Sotolongo, by Deputy Parent Defender Annick Lenoir-Peek, for respondent-mother.

Fox Rothschild LLP, by Zachary T. Dawson, for guardian ad litem.

ZACHARY, Judge.

Respondent-mother appeals from an order terminating her parental rights to her children, "Landon" and "Cody"[1] (collectively, "the children"), who were born in 2013 and 2014. After careful review, we affirm.[2]

Procedural and Factual History

[1] Pseudonyms have been used throughout the opinion to protect the juveniles' privacy and for ease of reading.

[2] Respondent-father, whose parental rights were also terminated, is not a party to this appeal.

The children and their two older sisters[3] came to the attention of the Polk County Department of Social Services ("DSS") in 2015 after Cody's twin brother, "Corey," died from an injury sustained while in the care of his paternal uncle, Mr. J. On 12 June 2015, DSS filed juvenile petitions alleging that the children and their sisters were neglected. The petitions alleged that respondent-mother admitted to giving Mr. J. two oxycodone pills and leaving Cody and Corey in his care, despite knowing that Mr. J. had lost custody of his own child "due to neglect related to substance abuse issues." The petitions further alleged that respondent-mother was unable to provide for the children's care and supervision due to her own misuse of marijuana and prescription medication. She tested positive for hydrocodone on 23 April 2015, 11 May 2015, and 2 June 2015; methadone and marijuana on 6 April 2015 and 21 April 2015; and marijuana on 1 June 2015. On 10 June 2015, respondent-mother was arrested for stealing prescription medication. Her "initial substance abuse assessment indicated [that] she needed intensive outpatient substance abuse treatment[,]" but she "failed to be successful at this level of treatment[.]" When an alternative treatment plan was recommended, she refused to participate.

On 18 August 2015, the trial court entered an order adjudicating dependency based on respondent-mother's stipulation to the petitions' allegations. The court

[3] The sisters are not subjects of this appeal.

entered a temporary disposition awarding DSS legal custody of the four juveniles and maintaining the children's placement with respondent-father.

After receiving additional evidence on 15 September 2015, the trial court entered a dispositional order awarding respondent-mother two hours of weekly supervised visitation with the children, directing DSS to make reasonable efforts toward reunification, and ordering respondents to enter into a case plan "which addresses the Respondent Mother's substance abuse issues and mental health issues[, as well as] parenting education and stable housing[.]" The children were allowed to continue in their placement with respondent-father "as long as the Respondent Mother remains out of the home[.]"

At the 90-day review hearing on 15 December 2015, the trial court found that respondent-mother had entered into a case plan on 17 November 2015, but "continued to blame everyone for all that has happened to her" and to resist mental health and substance abuse treatment. Following an assessment at Family Preservation Services, she was recommended to undergo twelve weeks of intensive outpatient substance abuse treatment beginning 16 December 2015. On 16 December 2015, respondent-mother was screened for drugs by DSS, and tested positive for marijuana, opiates, hydrocodone, hydromorphone, norhydrocodone, and aminoclonazepam.

On 21 December 2015, respondent-mother and respondent-father were arrested after engaging in a violent altercation in the children's presence. DSS

terminated the placement with respondent-father and moved the children into foster care. Respondent-mother pleaded guilty to two counts of misdemeanor child abuse and one count of misdemeanor assault and battery stemming from the incident and was released from jail on 6 January 2016.

Following a review hearing held on 26 July 2016, the trial court changed the children's permanent plan from reunification to concurrent plans of reunification and adoption. Although respondent-mother had obtained employment, the court found that she faced dismissal from her conflict resolution course if she missed another class, had failed to complete parenting classes, and had attended just six of sixteen mental health counseling sessions and one of sixteen substance abuse group sessions. Respondent-mother had twice reported to DSS that she was no longer taking the medication prescribed "to address her mental health issues." On 27 May 2016, she tested positive for methadone, benzodiazepines, oxycodone and hydrocodone.

Respondent-mother consented to a change of the children's permanent plan from reunification to adoption at a review hearing on 13 June 2017. In its written order entered 17 August 2017, the trial court cited respondent-mother's lack of progress in completing the goals of her case plan and found that her efforts were "so sporadic and inconsistent" as to make further reunification efforts by DSS "futile and . . . inconsistent with the children's health and safety." The court further found that respondent-mother misused the Percocet prescribed to her following the birth of her

son in February 2017, and was observed to be "extremely impaired in several public places."

TPR Proceeding

The trial court terminated respondent-mother's parental rights to the children's older sisters on 17 August 2017. That same day, DSS filed a motion to terminate respondent-mother's parental rights to Landon and Cody. The TPR motion alleged the following grounds for termination under N.C. Gen. Stat. § 7B-1111(a): (1) neglect; (2) lack of reasonable progress to correct the conditions leading to the children's removal from the home; (3) dependency; and (4) inability or unwillingness to establish a safe home for the children, having previously been subject to an involuntary termination of parental rights as to another child. *See* N.C. Gen. Stat. § 7B-1111(a)(1)-(2), (6), (9) (2017). The four grounds were alleged sequentially as subparagraphs 26(a)-(d) of the TPR motion.

DSS subsequently moved to amend subparagraph 26(d) to fully allege the statutory ground for termination in N.C. Gen. Stat. § 7B-1111(a)(9), to wit: "Pursuant to [N.C. Gen. Stat. §] 7B-1111(a)(9), the parental rights of Respondent Mother to two other of her children . . . have been involuntarily terminated and she lacks the ability or willingness to establish a safe home." The trial court allowed the amendment by order entered on 14 March 2018.

After a series of continuances, the trial court heard DSS's motion on 13 March 2018 and 24 April 2018. At the pretrial hearing, counsel for DSS advised the court that respondent-mother had stipulated to the existence of grounds for terminating her parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) and (9) as alleged in subparagraphs 26(a) and (d) of the TPR motion:

> [COUNSEL FOR DSS]: . . . I believe that the parties are stipulating that mom is going to stipulate to 2 of the grounds alleged in the motion. (Inaudible) the grounds of, let me say this specifically Judge, of TPR order entered in a prior matter. Children of respondent mom and that would be paragraph 26(d) in the motion. And the other ground which they're stipulating is to the 12 months of foster care ground which is 26(a) under the motion.
>
> THE COURT: And I'll just note then a statement that there is a stipulation as to the facts alleged in those that may also constitute grounds for termination. I guess I'll have to conclude as a matter of law later on about that but right now it sounds like you're stipulating as to the factual allegations there and I'll ask [the attorneys for the guardian *ad litem* and respondent-mother] (inaudible) paragraph 26 in the motion (a) and ([d]) in respect to the motion. Thank you.
>
> [COUNSEL FOR DSS]: Your Honor, pursuant to what [sic] stipulation, the department has (inaudible) with abandoned the grounds of neglect which is 26(b) of the motion. . . . And so we would abandon that (inaudible) which leaves the ground alleged under . . . [subparagraph] 26[(c) or 7B-]1111 a(6) under the statute. And that's the dependency ground.
>
> THE COURT: All right. Thank you. . . .

See N.C. Gen. Stat. § 7B-1108.1(a)(6) (2017) (allowing the court to resolve "[a]ny other issue which can be properly addressed as a preliminary matter" during the pretrial hearing).

At the adjudicatory stage of the termination hearing, DSS offered testimony from social worker Dana Davis and Dr. Pete Sansbury, a clinical psychologist and expert in parental capacity evaluations, who conducted an evaluation of respondent-mother between July and October 2017. DSS also introduced Dr. Sansbury's written parental capacity evaluation completed on 3 January 2018 as well as a "Comprehensive Clinical Evaluation & Capacity to Parent Evaluation" conducted by Dr. Laura L. Greenlee on 27 July 2016.

At the conclusion of its adjudicatory evidence, DSS reminded the court of the parties' stipulation to the existence of grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(2) and (9):

> [COUNSEL FOR DSS]: . . . The Court may recall there was a stipulation as to 2 of the grounds alleged.
>
> THE COURT: Yes sir I made a note of it. The termination of parental rights entered in a prior matter and the fact that the children had been 12 months in foster care outside the home.
>
> [COUNSEL FOR DSS]: Right. . . . .

DSS reiterated that it had withdrawn its allegation of neglect under N.C. Gen. Stat. § 7B-1111(a)(1), leaving for the court's determination the issue of dependency under

N.C. Gen. Stat. § 7B-1111(a)(6).

Respondent-mother declined to present evidence with regard to adjudication. Before proceeding to disposition, the trial court reviewed its understanding of respondent-mother's stipulation with the parties:

> THE COURT: . . . [J]ust to confirm our stipulations . . . with respect to - let me pull out the petition here. . . . I will confirm that this note of record or just what we just did a moment ago, paragraph 26 of part d of that - of that claim, that allegation that the parental rights of the respondent mother to 2 other of her children . . . have been involuntarily terminated. So I'll note that a stipulation with respect to . . . the motion in the cause relating the mom's termination of parental rights with respect to the . . . children today. And, with respect to 26(a) in that same motion of cause and again with respect to grounds today in our hearing regarding [Landon and Cody], the stipulation that respondent mom has willfully left the minor children in foster care or placement outside the home for more than 12 months without showing to the satisfaction to the Court the reasonable progress under - I mean, I'm not sure - our stipulation related to the 12 months, did it also relate to the without showing to the satisfaction of the Court reasonable progress? I did not make a note of that. I might have to - if ya'll don't recall, go back and see.
>
> [COUNSEL FOR DSS]: The stipulation as I understood it Your Honor was to the (inaudible) of that ground and facts supported that.
>
> THE COURT: All right. Is that what you're recalling [counsel]?
>
> [COUNSEL FOR GUARDIAN *AD LITEM*]: My notes suggest that mom's stipulated that grounds exist because of prior TPR's and because the child has been left in foster care more than 12 months.

> THE COURT: And [counsel,] is that your recollection too? *The stipulation as to the whole ground* which includes without showing to the satisfaction of the Court that reasonable progress could be made? I'm thinking that was the stipulation. I just want to confirm that.
>
> [COUNSEL FOR RESPONDENT-MOTHER]: *That's my understanding Your Honor*.

(Emphasis added).

At disposition, DSS elicited testimony from the protective services supervisor who worked with respondent-mother's family and from the children's foster mother. Respondent-mother called DSS protective services agent Dierdre Hines, who had been assigned to her case since 1 October 2017.

In its order terminating respondent-mother's parental rights, the trial court found that grounds for termination existed under N.C. Gen. Stat. § 7B-1111(a)(2), (6), and (9). The court further determined it was in the children's best interests to terminate respondent-mother's parental rights. *See* N.C. Gen. Stat. § 7B-1110(a) (2017). Respondent-mother filed timely notice of appeal.

Respondent-Mother's Appeal

I. Fundamental Fairness

Respondent-mother first contends that the termination hearing was "fundamentally unfair" because the trial court "did not hear evidence on adjudication beyond the filing of the [TPR] motion" and because the evidence adduced at

disposition "would have defeated the grounds" for termination found by the court under N.C. Gen. Stat. § 7B-1111(a). We conclude this argument is not properly before this Court.

Under our Rules of Appellate Procedure, "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C.R. App. P. 10(a)(1). Respondent-mother raised no objection to the "fairness" of the termination proceeding in the trial court. Accordingly, she has failed to preserve this issue for appellate review. *Cf. In re C.M.P.*, ___ N.C. App. ___, ___, 803 S.E.2d 853, 857 (2017) (concluding that the respondent-mother failed to preserve for appeal the issue of whether her due process rights were violated at the termination hearing).

A proceeding to terminate parental rights consists of an adjudicatory stage and a dispositional stage. *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001); *see also* N.C. Gen. Stat. §§ 7B-1109-10 (2017). During the adjudicatory stage, the court must determine whether the petitioner has established the existence of at least one statutory ground for termination under N.C. Gen. Stat. § 7B-1111(a) by clear, cogent, and convincing evidence. *Id.* "If the trial court determines that at least one ground for termination exists, it then proceeds to the disposition stage where it must determine whether terminating the rights of the parent is in the best interest

of the child[.]" *In re A.B.*, 239 N.C. App. 157, 161, 768 S.E.2d 573, 575 (2015), *disc. review denied,* 369 N.C. 182, 793 S.E.2d. 695 (2016).

As contemplated by our statutes, the trial court conducted a full hearing—receiving witness testimony and other evidence with regard to adjudication and disposition—and entered an order with appropriate findings of fact and conclusions of law. *See In re Tyner*, 106 N.C. App. 480, 484, 417 S.E.2d 260, 262 (1992). We note that respondent-mother's assertion that the trial court heard no adjudicatory evidence with regard to circumstances subsequent to DSS's filing of the TPR motion is inaccurate. As reflected in the trial court's findings, Dr. Sansbury conducted his evaluation of respondent-mother's parenting capacity through October 2017 and completed his written parental capacity evaluation on 3 January 2018. Moreover, we find inapposite respondent-mother's observation that the Juvenile Code does not authorize entry of judgment on the pleadings or by consent in a termination of parental rights case. *See Curtis v. Curtis*, 104 N.C. App. 625, 627-28, 410 S.E.2d 917, 919 (1991).

Respondent-mother's claim of unfairness is based upon her counsel's stipulation to two of the statutory grounds for terminating her parental rights alleged by DSS in its TPR motion. Respondent-mother notes that parties cannot stipulate to conclusions of law such as the existence of a particular ground for termination under N.C. Gen. Stat. § 7B-1111(a). *See In re A.K.D.*, 227 N.C. App. 58, 60, 745 S.E.2d 7, 9

(2013) ("[S]tipulations as to questions of law are generally held invalid and ineffective . . . ." (citation and quotation marks omitted)); *see also In re C.W.*, 182 N.C. App. 214, 219, 641 S.E.2d 725, 729 (2007) ("On appeal, this Court considers whether the trial court's findings of fact . . . support the trial court's conclusion that grounds for termination exist pursuant to N.C. Gen. Stat. § 7B-1111."). Respondent-mother further argues that a stipulation to the facts alleged by DSS in the TPR motion filed on 17 August 2017 could not establish grounds for terminating her parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) or (9), because each of these grounds requires the trial court to consider the respondent-parent's circumstances at the time of the termination hearing.

"Stipulations are judicial admissions and are therefore binding in every sense, preventing the party who agreed to the stipulation from introducing evidence to dispute it and relieving the other party of the necessity of producing evidence to establish an admitted fact." *In re I.S.*, 170 N.C. App. 78, 86, 611 S.E.2d 467, 472 (2005) (citation omitted). By stipulation, adverse parties may

> establish any material fact which has been in controversy between them, and thereby eliminate the necessity of submitting an issue to the [trier of fact] with reference to it. Once a stipulation is made, a party is bound by it and he may not thereafter take an inconsistent position.

Rural Plumbing & Heating, Inc. v. H. C. Jones Const. Co., 268 N.C. 23, 31, 149 S.E.2d 625, 631 (1966) (citations omitted). Generally, "[c]ourts look with favor on

stipulations designed to simplify litigation." *Sloop v. Friberg*, 70 N.C. App. 690, 694, 320 S.E.2d 921, 924 (1984).

When advised of the parties' stipulation to the grounds for termination alleged in subparagraphs 26(a) and (d) of the TPR motion, the trial court provided the following clarification:

> THE COURT: And I'll just note then a statement that there is a stipulation as to the facts alleged in those [subparagraphs] that may also constitute grounds for termination. I guess I'll have to conclude as a matter of law later on about that but right now it sounds like you're stipulating as to the factual allegations there . . . .

It is clear from the court's caveat that it did not mistakenly accept a stipulation to any conclusion of law but merely to those facts alleged in the TPR motion in support of the statutory grounds for termination listed in subparagraphs 26(a) and (d)—i.e., N.C. Gen. Stat. § 7B-1111(a)(2) and (9).

We agree with respondent-mother that N.C. Gen. Stat. § 7B-1111(a)(2) and (9) require the court to consider the parent's situation at the time of the hearing. *See In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006) (explaining that, under N.C. Gen. Stat. § 7B-1111(a)(2), "the nature and extent of the parent's reasonable progress . . . is evaluated for the duration leading up to the hearing on the motion or petition to terminate parental rights" (original emphasis omitted)); *see also In re L.A.B.*, 178 N.C. App. 295, 301, 631 S.E.2d 61, 65 (2006) (concluding, under N.C. Gen. Stat. § 7B-1111(a)(9), that the trial court's findings supported its "determination that

[the] respondent mother lacks the ability or willingness to establish a safe home in which [the juvenile] could spend his childhood"). However, we are not persuaded by respondent-mother's contention that her stipulation *on the date of the termination hearing* to the facts alleged in a previously filed TPR motion is insufficient to establish the existence of grounds for terminating her parental rights at the time of the hearing.

While it is true that many of the factual allegations in the TPR motion are time-bound and refer to events that occurred prior to the motion's filing, other allegations are not so limited, including:

> 21. Respondent Mother is incapable of parenting her children on her own due to her mental health and substance abuse issues.
>
> 22. Respondent Mother has demonstrated over the course of this proceeding that she is unable to establish a long-term, stable living arrangement, which would provide a safe environment for her children.
>
> . . . .
>
> 26. Pursuant to NCGS §7B-1111, the parental rights of [respondent-mother], as to the minor children [Landon] and [Cody], should be terminated upon the following grounds:
>
> . . . .
>
> d. Pursuant to NCGS 7B-1111(a)(9), the parental rights of Respondent Mother to two other of her children, [H.R. and D.W.], have been involuntarily terminated and she lacks the ability or willingness to establish a safe home.

"Termination under § 7B-1111(a)(9) . . . necessitates findings regarding two separate elements: (1) involuntary termination of parental rights as to another child, and (2) inability or unwillingness to establish a safe home." *In re L.A.B.*, 178 N.C. App. at 299, 631 S.E.2d at 64. Respondent-mother's stipulation thus satisfied the factual predicates for an adjudication under N.C. Gen. Stat. § 7B-1111(a)(9).

"When construing a stipulation a court must attempt to effectuate the intention of the party making the stipulation as to what facts were to be stipulated without making a construction giving the stipulation the effect of admitting a fact the party intended to contest." *In re I.S.*, 170 N.C. App. at 87, 611 S.E.2d at 473. Based on our review of the transcript, we are satisfied that respondent-mother intended to stipulate to DSS's factual allegations "as to the whole ground" for terminating her parental rights stated in subparagraphs 26(a) and (d) of the TPR motion, i.e., under N.C. Gen. Stat. § 7B-1111(a)(2) and (9). *Cf. id.* at 86, 611 S.E.2d at 472 ("If respondent's attorney had, in fact, stipulated to all of the facts the trial court found her to have stipulated to, there would have been no need for further findings of fact on the issue of whether grounds existed to terminate respondent's parental rights.").

II. Ineffective Assistance of Counsel

As an alternative to her fairness argument, respondent-mother claims she was denied effective assistance of counsel at the termination hearing. Specifically, she faults her counsel for stipulating to the existence of grounds to terminate her parental

rights during the adjudicatory stage of the hearing only to offer evidence at the dispositional stage that effectively disproved the stipulated grounds. According to respondent-mother, "[h]ad trial counsel presented the evidence she elicited on disposition during adjudication, she likely would have gotten the motion dismissed."

"Parents have a right to counsel in all proceedings dedicated to the termination of parental rights. . . . This right includes the right to effective assistance of counsel." *In re L.C.*, 181 N.C. App. 278, 282, 638 S.E.2d 638, 641 (citations and internal quotation marks omitted), *disc. review denied*, 361 N.C. 354, 646 S.E.2d 114 (2007). "A claim of ineffective assistance of counsel requires the respondent to show that counsel's performance was deficient and the deficiency was so serious as to deprive the represented party of a fair hearing." *In re Oghenekevebe*, 123 N.C. App. 434, 436, 473 S.E.2d 393, 396 (1996).

On appeal, the respondent bears the heavy burden of proving "that counsel's conduct fell below an objective standard of reasonableness[.]" *In re C.B.,* 245 N.C. App. 197, 213-14, 783 S.E.2d 206, 217 (2016) (citation and internal quotation marks omitted). "Decisions such as which witnesses to call, or whether and how to conduct examinations[,] are strategic and tactical decisions . . . within the exclusive province of the attorney. Trial counsel are necessarily given wide latitude in these matters." *Id.* at 213, 783 S.E.2d at 217 (citation and internal quotation marks omitted). A respondent will only succeed on an ineffective assistance of counsel claim if she can

show prejudice—that there is a "reasonable probability" that counsel's error, even if "unreasonable," led to a "different result in the proceedings." *Id.* (citation and internal quotation marks omitted).

In *In re M.Z.M.*, 251 N.C. App. 120, 796 S.E.2d 22 (2016), the respondent-mother's attorney "fail[ed] to present any evidence or argument during the adjudicatory phase of the termination hearing." *Id.* at 125, 796 S.E.2d at 25. "[C]ounsel asked no questions of [DSS]'s witnesses, nor presented any evidence or argument during adjudication, and told the trial court that he did not 'wish to be heard.' " *Id.* at 125-26, 796 S.E.2d at 26. On appeal, the respondent-mother claimed her counsel was ineffective in failing to challenge DSS's asserted grounds for termination with evidence of the services she had accessed in prison, her "changed perspective on life," and her lack of involvement with the former romantic partner responsible for abusing M.Z.M. *Id.* at 127, 796 S.E.2d at 26-27. She further faulted counsel for failing to argue that this evidence showed she was unlikely to engage in a repetition of neglect under N.C. Gen. Stat. § 7B-1111(a)(1), that she had made reasonable progress in correcting the conditions leading to removal for purposes of N.C. Gen. Stat. § 7B-1111(a)(2), and that she did not willfully abandon her children under N.C. Gen. Stat. § 7B-1111(a)(7). *Id.* at 127, 796 S.E.2d at 27.

In affirming the termination of the respondent-mother's parental rights, this Court acknowledged counsel's duty of advocacy, but emphasized that "[i]neffective

assistance of counsel claims are not intended to promote judicial second-guessing on questions of strategy and trial tactics." *Id.* (citation omitted). Reviewing the entirety of his performance at the termination hearing, we found counsel's "decision to essentially concede the existence of grounds for termination . . . was a tactical concession" based on the evidence and noted that "[c]ounsel presented a thoughtful and reasoned argument in opposition to terminating [the r]espondent-mother's parental rights during disposition." *Id.* at 128-29, 796 S.E.2d at 27-28. While not endorsing counsel's "choice of tactics," we ultimately held the respondent-mother had "failed to show prejudice or that counsel's conduct undermined the fundamental fairness of the proceeding." *Id.* at 128, 796 S.E.2d at 27.

Here, as in *In re M.Z.M.*, "[r]espondent-mother argues counsel acted unreasonably by withholding evidence . . . until the dispositional phase of the hearing." *Id.* at 129, 796 S.E.2d at 28. Having thoroughly reviewed the hearing transcript and other evidence of record, we are satisfied that counsel's decision to concede the existence of grounds for termination and concentrate her efforts on the dispositional stage of the hearing represents a conscious tactical decision based on her assessment of the case. Furthermore, unlike the attorney in *In re M.Z.M.*, respondent-mother's counsel did not wholly abdicate her advocate's role at the adjudicatory stage of the hearing. As respondent-mother concedes in her brief,

counsel "ably elicited a few positives from [DSS's] witnesses" through cross-examination.

We do not agree with respondent-mother's contention that the evidence counsel presented at disposition would have refuted the grounds for termination had it been offered during the adjudicatory stage of the hearing. Counsel did elicit favorable testimony from Ms. Elliott and Ms. Hines about respondent-mother's progress on her case plan since October 2017, and her improved performance at visitations with the assistance of a parent-child therapist provided by DSS. However, neither witness testified that respondent-mother was prepared to provide a safe home for the children, *see* N.C. Gen. Stat. § 7B-1111(a)(9). Ms. Hines merely averred that respondent-mother "is learning and still learning the[] skills to parent her children" and continued to need support services in order to "maintain" the progress she had made. Ms. Hines expressed "the same [concerns] as the agency" about returning the children to respondent-mother's care, given her history of showing some progress in managing her mental health and substance abuse issues, only to backslide in response to stressful conditions when DSS was no longer providing supervision.

We also reject respondent-mother's assertion that Ms. Hines's testimony had no relevance to the issues before the trial court at the dispositional hearing. *See In re M.Z.M.*, 251 N.C. App. at 130, 796 S.E.2d at 28-29. "The potential value to [the children] of maintaining a relationship with [r]espondent-mother, as well as

[r]espondent-mother's efforts and desire to remain a part of her children's lives, were . . . plainly 'relevant' to the court's dispositional determination under N.C. Gen. Stat. § 7B-1110(a)." *Id.* Counsel's approach at disposition was to convey to the court that the children would benefit by maintaining a relationship with their mother. After confirming through Ms. Elliott that respondent-mother was open to "co-parenting with the foster parents," counsel elicited the following response from the children's foster mother on cross-examination:

> Q. Are you and your husband willing to work with [respondent-mother] with shared parenting in the event that this termination isn't granted?
>
> A. Yes I have told [respondent-mother] in the past we would always want to do what's best for the boys and if its [sic] what's best for them for her to be a part of their lives I wanted to work that out.

"Judicial scrutiny of counsel's performance must be highly deferential. It is . . . all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland v. Washington*, 466 U.S. 668, 689, 80 L. Ed. 2d 674, 694 (1984). In light of counsel's performance throughout the entirety of the termination hearing, we cannot conclude that her decision to stipulate to the existence of grounds for terminating respondent-mother's parental rights under N.C. Gen. Stat. § 7B-1111(a)(2) and (9) was unreasonable under the circumstances. Nor has respondent-mother demonstrated any reasonable likelihood that the trial court would have reached a

more favorable outcome to respondent-mother had counsel contested these grounds by introducing Ms. Elliott's testimony during the adjudicatory stage of the hearing. Therefore, we conclude that respondent-mother has failed to show a denial of her right to effective assistance of counsel.

III. Grounds For Termination

Finally, respondent-mother challenges the trial court's conclusions that grounds existed to terminate her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(2), (6), and (9).

"This Court reviews a trial court's conclusion that grounds exist to terminate parental rights to determine whether clear, cogent, and convincing evidence exists to support the court's findings of fact, and whether the findings of fact support the court's conclusions of law." *In re A.B.*, 239 N.C. App. at 160, 768 S.E.2d at 575 (citation omitted). "If the trial court's findings of fact are supported by ample, competent evidence, they are binding on appeal, even though there may be evidence to the contrary." *In re S.C.R.*, 198 N.C. App. 525, 531, 679 S.E.2d 905, 909, (citation and internal quotation marks omitted), *appeal dismissed*, 363 N.C. 654, 686 S.E.2d 676 (2009). Unchallenged findings of fact "are conclusive on appeal and binding on this Court." *Id.* at 532, 679 S.E.2d at 909. "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re J.S.L.*, 177 N.C. App. 151, 154, 628 S.E.2d 387, 389 (2006) (citation and internal quotation marks omitted).

This Court has held that "[a] finding of any one of the enumerated grounds for termination of parental rights under N.C.G.S. 7B-1111 is sufficient to support a termination." *In re Humphrey*, 156 N.C. App. 533, 540, 577 S.E.2d 421, 426 (2003). Therefore, "[w]here . . . an appellate court determines there is at least one ground to support a conclusion that parental rights should be terminated, it is unnecessary to address the remaining grounds" found by the trial court. *In re Clark*, 159 N.C. App. 75, 78 n.3, 582 S.E.2d 657, 659 n.3 (2003).

Here, we limit our review to respondent-mother's argument that the trial court erred in terminating her parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(9), which

> provides for termination of parental rights when "[t]he parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home." Termination under § 7B-1111(a)(9) thus necessitates findings regarding two separate elements: (1) involuntary termination of parental rights as to another child, and (2) inability or unwillingness to establish a safe home.

In re L.A.B., 178 N.C. App. at 299, 631 S.E.2d at 64 (quoting N.C. Gen. Stat. § 7B-1111(a)(9)). The Juvenile Code defines a "safe home" as "[a] home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect." N.C. Gen. Stat. § 7B-101(19) (2017).

As discussed above, respondent-mother stipulated to the facts alleged in the TPR motion with regard to the existence of grounds for termination under N.C. Gen. Stat. § 7B-1111(a)(9). She is bound by these stipulations and "may not take a position in this Court contrary to [her] stance in the trial court." *McGee v. McGee*, 118 N.C. App. 19, 29, 453 S.E.2d 531, 537, *disc. review denied*, 340 N.C. 359, 458 S.E.2d 189 (1995). Moreover, respondent-mother does not contest the finding that her rights were involuntarily terminated as to Landon and Cody's older sisters.

To the extent the trial court's determination that respondent-mother is unable to provide a "safe home" for the children requires application of the legal standard established by N.C. Gen. Stat. § 7B-101(19), it is in the nature of a conclusion of law. *Cf. In re Ellis*, 135 N.C. App. 338, 340, 520 S.E.2d 118, 120 (1999) ("Whether a child is neglected or abused [as defined by N.C. Gen. Stat. § 7B-101(1) and (15)] is a conclusion of law."). Accordingly, respondent-mother's stipulation is insufficient to establish this element of N.C. Gen. Stat. § 7B-1111(a)(9) for purposes of an adjudication. *See In re A.K.D.*, 227 N.C. App. at 60, 745 S.E.2d at 9 (noting the general inefficacy of stipulations to matters of law).

Based on respondent-mother's stipulation and the evidence adduced by DSS at the termination hearing, the trial court made the following uncontested[4] findings of fact:

> 3. The Court conducted a pretrial hearing . . . prior to the adjudicatory hearing . . . and found that:
>
> . . . .
>
> (h) The parties entered the following stipulations:
>
> . . . .
>
> c. Respondent Mother stipulates to the Court's finding two of the grounds for termination of parental rights, i.e., willful leaving of the children in foster care for more than twelve [months], under NCGS §7B-1111(a)(2), and prior involuntary termination of [parental rights as to] two other of her children, under NCGS §7B-1111(a)(9). She stipulates to the factual allegations of [DSS's] motion supporting the findings of those grounds.
>
> . . . .
>
> 12. Safety risks that brought [Landon and Cody] into the care of Polk County DSS and kept them in care are: substance abuse of the Respondent Mother; mental health issues for the Respondent Mother . . . ; living in an environment injurious to the welfare of a minor; domestic violence and anger management; an unstable living environment and inadequate parenting skills.

[4] Respondent-mother challenges adjudicatory Finding of Fact 19 as unsupported by the evidence. However, because this finding is unnecessary to support the adjudication under N.C. Gen. Stat. § 7B-1111(a)(9), we need not address her exception. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006).

. . . .

14. On March 30, 2015, [Corey], sibling of [Landon and Cody], died from an injury sustained while in the care of [Mr. J.], brother of [respondent-father] . . . . The Respondent Mother was aware that [Mr. J.] had previous substance abuse issues, had spent time in rehab, and had lost custody of his child in Nevada because of neglect related to substance abuse issues.

15. The Respondent Mother admitted that on the day the juvenile died, Mr. [J.] asked her for two of her oxycodone pills and she gave them to him before leaving to pick up [respondent-father] from work. Additionally, [she] admitted to smoking marijuana with [Mr. J.]. The Respondent Mother later changed her story . . . .

. . . .

17. On December 21, 2015, Respondent Mother and [respondent-father] were arrested due to an incident of domestic violence occurring in the Mill Spring, North Carolina community. [She] was charged with abduction of children, misdemeanor child abuse and assault and battery as a result of a physical altercation with [respondent-father] and her taking then two year old [Landon] from [his] possession.

18. Respondent Mother did not enter into a Family Services Case Plan . . . until November 17, 2015. She failed to cooperate and make progress in completing the goals and recommendations of the plan in a timely manner and has not demonstrated that she can appropriately provide for the care and protection of the juveniles.

19. The Family Services Case Plan was to work on issues which led to the dependency and neglect of [Landon] and [Cody] and their placement into foster care, including substance abuse, mental health issues, and her living

environment injurious to the welfare of a child, her need for anger management, unstable living environment and lack of parenting skills. The respondent mother has worked the plan only sporadically and completed only a few requirements of the Plan.

. . . .

29. Since January 2017, Respondent Mother's performance concerning substance abuse or treatment therefor or treatment for mental health issues indicates that her dependence upon controlled substances continued and that she continued to be sporadic in seeking treatment of the same or for her mental health issues.

. . . .

31. [Respondent-mother] has failed to seek either mental health treatment or substance abuse treatment until January 11, 2017 when she had an initial evaluation through Family Preservation Services in Hendersonville, NC. Respondent Mother has a history of treatment and then failure to follow up on treatment.

32. Respondent Mother has a history of criminal charges and convictions since the death of [Corey] in March 2015, along with a Domestic Violence case with [respondent-father]. Respondent Mother has been convicted of crimes since the initiation of this case, including misdemeanor larceny, violation of court orders, obstruction of justice and DWI.

. . . .

43. Respondent Mother has had supervised visitation with her children throughout the course of DSS involvement up until the time of this hearing. She consistently demonstrated her inability to manage the children's behavior or to interact appropriately with her sons during those visits.

. . . .

45. Two older children of Respondent Mother . . . have been the subject of a termination of parental rights proceeding against [her] and the court ordered termination of her rights as to those children . . . in the Office of the Clerk of Superior Court for Polk County, which Termination of Parental Rights Order is incorporated herein by reference.

46. The Respondent Mother and the juveniles participated in a psychological evaluation with Dr. Laura Greenlee on May 27, 2016; June 10, 2016; and, June 14, 2016, to determine the capacity of the Respondent Mother to parent. Dr. Greenlee's final report was admitted into evidence.

47. Dr. Greenlee identified several parenting risk factors for the Respondent Mother, which include (a) her own history of family dysfunction, which fails to provide her a model for prosocial ways to raise her own children, (b) her history of problematic romantic partners, (c) her history of mental health issues including anxiety disorder, PTSD, substance usage, and personality disorders, (d) her history of legal problems including assault, abduction of children, and DV, (e) her history of making poor decisions and lack of boundaries with her children, (f) her history of DSS involvement with her family, (g) lacking financial resources to raise her children, [and] (h) minimal commitment to substance [abuse] recovery and mental health treatment.

48. Dr. Greenlee's opinion is that Respondent Mother is unlikely to be able to change her behavior and that she lacks emotional stability, insight, judgment, ability to protect her children and commitment to permanent psychosocial change needed to confidently allow her to have her children in her sole custody. . . .

49. Dr. Pete Sansbury testified as an expert in clinical

psychology and in the conduct of parental capacity evaluations.

50. Dr. Sansbury conducted a parental capacity evaluation of Respondent Mother during the summer and fall of 2017, with his report dated January 3, 2018. He had also evaluated Respondent Mother in 2009 related to a prior juvenile case involving her older children.

51. Dr. Sansbury found Respondent Mother highly defensive, that it is difficult for her to acknowledge any criticism, that she takes offense should anyone question her and that she tends to have trouble learning from the consequences of her actions.

52. From his observations of Respondent Mother during visitation with her three children there appeared to be no strong bond by the . . . children with her which creates a very difficult parenting relationship because of attachment issues.

53. That for Respondent Mother to be able to accomplish effective parenting skills would require a genuine commitment by her to change and would require a very long-term process. She would have to be committed on her own, not just because DSS is requiring her and supporting her.

54. Respondent Mother would require continued, long-term support from others, such as a therapist, sponsor, spouse or other stable family member, to be able to consistently, successfully parent and not relapse into drug use.

55. Dr. Sansbury expressed doubt that Respondent Mother could handle significant parent-child conflicts over time without risk of her resorting to medications or experiencing significant anxiety and stress causing further problems in her relationship with her children. . . .

> . . . .
>
> 60. Pursuant to NCGS §7B-1111, grounds for termination of the parental rights of [respondent-mother] as to the minor children, [Landon] and [Cody], exist as follows:
>
> . . . .
>
> c. Pursuant to NCGS 7B-1111(a)(9), the parental rights of Respondent Mother to two other of her children . . . have been involuntarily terminated and she lacks the ability or willingness to establish a safe home.

The court also entered a separate "Conclusion of Law" that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(9) to terminate respondent-mother's parental rights.

We hold that the trial court's findings support its conclusion that respondent-mother "lacks the ability or willingness to establish a safe home" pursuant to N.C. Gen. Stat. § 7B-1111(a)(9). The independent assessments of Dr. Greenlee and Dr. Sansbury, combined with the evidence of respondent-mother's protracted mental health and substance abuse issues, are sufficient to demonstrate the substantial risks posed to the children by a return to respondent-mother's care. *See In re V.L.B.*, 168 N.C. App. 679, 684, 608 S.E.2d 787, 791 (affirming an adjudication under N.C. Gen. Stat. § 7B-1111(a)(9) based on the parents' longstanding and severe mental illness), *disc. review denied*, 359 N.C. 633, 614 S.E.2d 924 (2005).

Having upheld the adjudication under N.C. Gen. Stat. § 7B-1111(a)(9), we need not review the two remaining grounds for termination found by the trial court. *Clark*,

159 N.C. App. at 78 n.3, 582 S.E.2d at 659 n.3. The order terminating respondent-mother's parental rights to Landon and Cody is hereby affirmed.

AFFIRMED.

Judges STROUD and INMAN concur.

Report per Rule 30(e).