



CHINS

3/23/2020

In **In re De.B.**, 144 N.E.3d 763 (Ind. Ct. App. 2020), the Court held that the trial court did not err in admitting the lab reports showing the results of Parents' drug tests, as they were business record exceptions to the hearsay rule; the Court also held that there was sufficient evidence to support the CHINS adjudication.

In February 2019, a car driven by Father was pulled over by the police after a report of theft at a nearby Target. Mother was in the passenger seat, and De.B. was in a carseat in the back seat. During the stop, Mother admitted to the theft, stating that she needed to sell the stolen items for food. The police then searched the vehicle, and discovered not only the stolen items, but also syringes and a bent spoon. The police took Mother and Father to the police station for questioning, where Father told the police that the syringes and bent spoon belonged to Mother, because Father "prefers to snort" his methamphetamine. Mother and Father were arrested, and DCS was called because there was no other caregiver for De.B. While at the police station, Mother told the DCS caseworker that Father uses THC. De.B. was placed in foster care, and DCS filed a petition for CHINS the next day.

The factfinding was set for April 5. During the time period before hearing, Father submitted two samples for drug screening on separate occasions, and Mother submitted four. All six of the samples were sent to Forensic Fluids in Kalamazoo, Michigan, for analysis. On March 20, DCS filed a motion requesting that Bridget Lemberg, Forensic Fluids' lab director, be allowed to testify telephonically because of the travel distance. Father objected, citing Indiana Administrative Rule 14(B), which requires such motions to be filed more than thirty days before hearing. The factfinding hearing commenced on April 5, 2019, and Father renewed his objection to Ms. Lemberg's telephonic testimony. The judge overruled the objection and allowed Lembert to testify about the lab, its certifications, lab procedures, and the results and reports produced by the lab's analysis of both Mother and Father's samples. Father's attorney objected throughout Ms. Lembert's testimony on hearsay grounds. The court overruled each objection and allowed testimony to continue, based on the business record exception to hearsay. Additional testimony was provided at hearing, including Mother and Father's admissions to drug use and concerns from the home-based caseworker about housing and job stability for both parents. The court entered its findings on June 6, 2019, and found that De.B. was a CHINS due to Parents' substance abuse issues and tenuous stability. At disposition, the court adopted DCS' recommendations for services related to drug use and housing.

The trial court did not err in admitting the drug test lab records as business record exceptions to the hearsay rule; the Court disagreed with prior recent case, and determined that the lab required the records in order to operate, they were subject to review and internal checks, and they were records that were routinely made. Id. at 770. Father argues

that the trial court erred by determining that the lab reports fit within the business-records exception. *Id.* at 769. The Court disagreed with Father and with recent prior case law. *Id.* at 769-70. The Court noted that hearsay is not admissible unless it falls into certain exceptions, one of which is the business record exception, found at Ind. Evid. R. 803(6). *Id.* at 769. This Rule provides that a record of an act, event, condition, opinion, or diagnosis is admissible if:

- (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;
- (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
- (C) making the record was a regular practice of that activity;
- (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(9) or (10) or with a statute permitting certification; and
- (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

The Court noted that business records are deemed reliable exceptions to the hearsay rule because the organization depends on them to operate, they are subject to review, audits, or internal checks, and precisions results from their repetition. *Id.* (internal citations omitted). The Court noted prior law holding that drug test lab reports did not meet the business records exception threshold but disagreed with their analysis. *Id.*, citing *In re L.S.*, 125 N.E.3d 628, 634 (Ind. Ct. App. 2019), *trans. not sought*. However, the Court pointed out in a footnote that “[a] different panel of this Court held in *In re K.R.* that Forensic Fluids lab reports were business records. 133 N.E.3d 754, 762 (Ind. Ct. App. 2019), *trans. granted*. *Id.* at n.3. The Court opined that the lab does indeed depend on the lab reports to operate; if the lab did not follow certain procedures and processes, maintain samples and produce reports, it would lose its accreditation and its business. *Id.* at 770. The Court noted that drug lab records are in fact subject to both federal review and internal checks, and a lab result is rendered in every case. *Id.* Therefore, the trial court did not err in admitting the records under the business record exception. *Id.*

Father’s chain of custody argument regarding the drug lab samples failed, as Father failed to make a chain of custody challenge at trial, and any error would have been harmless due to Parents’ admissions of drug use. *Id.* at 771. Father argued that there was insufficient foundational testimony regarding the collection of the drug screens, essentially alleging that DCS failed to prove that the sample addressed in the lab reports actually belonged to Parents. *Id.* at 770. The Court characterized this as a chain of custody challenge, and noted that DCS bears a high burden to establish the chain of custody of evidence; to do so, DCS must give reasonable assurances that the evidence remained in an undisturbed condition, but this does not need to be a perfect chain of custody. *Id.* “To mount a successful challenge to the chain of custody, one must present evidence that does more than raise a mere possibility that the evidence may have been tampered with.” *Id.* at 771. The Court noted that there was very little evidence in the record regarding chain of custody of the samples; however, Father did not make a chain of custody objection at the trial, so the Court could not say the trial court erred in admitting the evidence. *Id.* The Court further noted that Parents both admitted at the trial, before the lab reports were admitted, that they had used marijuana during the case. *Id.* Any possible error was deemed harmless. *Id.*

Lastly, Father alleged that the evidence presented at trial was insufficient to support a CHINS finding. Id. at 771. **The Court disagreed, citing the drug screens, Father’s admission to drug use, his housing instability, and Father’s arrest for theft with the child and drug paraphernalia in the car. Id.**