TPR
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In **In re K.R.**, 154 N.E.3d 818 (Ind. 2020), the Indiana Supreme Court held that the trial court did not err in admitting drug test reports into evidence, and that the records fit the Business Record Exception to the hearsay rule.

Mother and Father are the parents to four children where were determined to be CHINS due to domestic violence. DCS eventually filed a petition to terminate Parents' parental rights because of their failure to complete services, provide stable housing, and their struggles with drug addiction and domestic violence. At the termination hearing, the trial court admitted drug test results into evidence from Forensic Fluids Lab, over the objections of Parents. The drug test results were admitted with the telephonic testimony of Bridgette Lemberg, the lab's director, who also signed an affidavit certifying the results as business records. Other evidence regarding Parents' substance abuse issues included Mother's admission to use of drugs, services providers testimony that Mother did not complete substance abuse services, Father's admission of his lifelong use of drugs, Father's testimony that he did not have a drug problem, and Father's failure to complete services. The trial court terminated both parents' rights, and they appealed, arguing that the drug test results were improperly admitted, and that there was insufficient evidence to support the terminations. The Court of Appeals found that the drug test results were properly admitted, and that there was sufficient evidence supporting the termination decision. *In re K.R.*, 133 N.E.3d 754 (Ind. Ct. App. 2019) *trans. granted*. The Indiana Supreme Court granted transfer.

The Court noted that there was a split amongst the appellate panels. Some appellate decisions held that drug tests do not fit within the Business Record Exception to the hearsay rule. See In re L.S., 125 N.E.3d 628, 634-35 (Ind. Ct. App. 2019) (holding that since the lab does not dependent on the records to conduct business, and the records are generated for the benefit of DCS, the business record exception does not apply); see also In re A.B., 130 N.E.3d 122, 128-29 (Ind. Ct. App. 2019) (citing L.S. in concluding that drug test results do not fall within the business records exception to the hearsay rule). However, other appellate decisions held that drug test results did indeed fit within the Business Records Exception to the hearsay rule. See In re K.R., 133 N.E.3d 754 (Ind. Ct. App. 2019) *trans. granted* (holding drug test results were admissible under the Business Records Exception to the hearsay rule); see also Matter of De.B., 144 N.E.3d 763, 767 (Ind. Ct. App. 2020) (holding that the trial court did not err in admitting the drug test results as Business Record Exceptions to the hearsay rule, and explicitly disagreeing with the L.S. line of reasoning). Lastly, the Court noted that trial courts have broad latitude to admit or exclude evidence. ___.

Drug test records fall under the Business Records Exception to the hearsay rule and are admissible if they meet proper foundational requirements. Id. at ___. Hearsay is an out of

court statement offered to prove the truth of the matter asserted. Ind. Evid. R. 801(c). Hearsay is only admissible if it falls into certain exceptions, and one those exceptions is the business records exception, found at Ind. Evid. R. 803(6). That Rule provides that the records of a "regularly conducted activity exception 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 also noted other prior case law explaining the element of trustworthiness; the business records must be trustworthy, and their reliability comes from the fact an organization depends on the records in order to function, the records are so repetitively done that the repetition ensures precision, and the person providing the information has a duty to do so correctly. Id. at ___, (internal citations omitted). Such records must also be subject to "review, audit, or internal checks". Id.

Labs do indeed depend on drug test records in order to operate; Forensic Fluids has a certification from the Federal Department of Health and Human Services, and in order to keep that certification, it must keep drug test reports for two years. The lab does not just create records for DCS but needs them independently of DCS's needs; if any client other than DCS submits a sample for drug testing, they expect to receive a drug test report. To not receive reports defeats the purpose of the business.

Furthermore, the records meet the required indicia of reliability. Previously noted indicia of reliability include: "the records at issue are subject to 1) review, audit, or internal check; 2) the precision engendered by the repetition; and 3) the fact that the person furnishing the information has a duty to do it correctly." The Court noted that all these requirements are met by drug test records. Lemberg testified in detail about the internal lab processes, quality control screening, double blind testing, methodical and repetitive process for handling samples, and the need to follow all state and federal regulations in order maintain their certification and licensure. Since these drug test records meet the requirements of reliability and trustworthiness, the trial court did not err in admitting them.

The Court characterized Parents'' arguments about test administration and chain of custody as invitations to reweigh the evidence, which the Court will not do.