



TPR

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In **Matter of L.S.**, 125 N.E.3d 628 (Ind. Ct. App. 2019), the Court held that the trial court did not err in admitting certain evidence, and that there was sufficient evidence to support the trial court's determination to terminate the parent-child relationship.

The child was born in October 2015 with drugs in her system, and DCS filed a CHINS petition. Mother admitted the CHINS allegations, and the trial court ordered relative placement upon the child's release. At the December 2015 dispositional hearing, the trial court ordered Mother to participate in services, submit to drug screens, and visit with the child. The FCM assigned in August 2016 never once saw a negative drug test from Mother. During a more than two year period, Mother either tested positive for cocaine or refused to take both random and scheduled drug screens. Mother completed detoxification services but left the facility before completing her inpatient treatment and did not notify DCS. Mother completed another substance abuse referral but did not comply with her treatment program. Mother cancelled multiple appointments at a third provider. Mother did not maintain regular contact with the FCM, and Mother only sporadically visited the child. DCS filed a petition to terminate the parent-child relationship, and the FCM testified this was in the child's best interests, and that the child was bonded with her placement and did not know Mother. When DCS introduced the drug tests into evidence, Mother objected, arguing that the test results appeared unreliable and the forensic lab technician was not there to testify. The trial court took the matter under advisement, allowed the testimony about the drug tests, but noted that if it determined that the records were inadmissible, the records and any testimony would be stricken from the record. The trial court ultimately issued an order terminating Mother's parental rights, and Mother appealed.

Since the laboratory did not rely upon the records to operate or to conduct business, the records did not qualify as business records under the business records exception to the rule; the records were inadmissible hearsay and should not have been admitted. *Id.* at 634-35. Hearsay is not admissible unless it falls under certain exceptions, one of which is the business record exception found at Indiana Evidence Rule 803(6). *Id.* at 634. This exception provides that a record 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 [the rule on self authentication] 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." *Id.* Indiana case law provides that reliability of business records stems from the fact that the organization depends on them to operate, and if a company does not rely

upon those records in order to function, they are not business records within the meaning of the hearsay exception. Id., citing In re Termination of Parent-Child Relationship of E.T., 808 N.E.2d 639, 645 (Ind. 2004). The Court determined that the drug test results did not fall within the business records exception to the rule against hearsay. Id. “Although the affidavits state that the laboratory reports were maintained in the normal course of business activity as business records, what we consider is whether a business depends on those records to function. Forensic Fluids Laboratories does not depend on these records to operate or to conduct business. Rather, the drug test results were documented for the benefit of DCS.” Id. Even though the trial court erred by admitting the records as evidence, the trial court’s determination was supported by substantial other evidence independent of these exhibits. Id. at 634-35.

Even excluding the improperly admitted evidence, the trial court did not err by finding that DCS clearly and convincingly proved that the conditions resulting in the child’s removal would not be remedied. Id. at 636. Mother argued that there was not clear and convincing evidence that there was a reasonable probability that the conditions resulting in the child’s removal would not be remedied. Id. at 635. In so arguing, she challenged several findings of fact pertaining to the drug tests, Mother’s noncompliance with services, her unstable housing, and her inconsistent visitation with the child. Id. The Court addressed each of these findings, and with the exception of the drug test records, found that the findings were supported by the evidence in the record. Id. at 635-36.