

MICHAEL DAVIDSON

VERSUS

LAKE MARINA TOWER
CONDOMINIUM
ASSOCIATION

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NO. 2026-C-0483

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2023-03033, DIVISION “J”
Honorable D. Nicole Sheppard

Judge Rosemary Ledet

(Court composed of Judge Rosemary Ledet, Judge Karen K. Herman, Judge
Nakisha Ervin-Knott)

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**WRIT GRANTED; JUDGMENT
VACATED; AND REMANDED
July 21, 2026**

RML

KKH

NEK

Relator—Lake Marina Tower Condominium Association (“Association”)—
seeks review of the trial court’s June 12, 2026 judgment granting the *Daubert*
motion filed by Respondent—Michael Davidson (“Tenant”).¹ For the following
reasons, we grant Association’s writ, vacate the trial court’s judgment, and remand.

Factual and procedural background

This Court summarized the factual and procedural background of this case in
a prior writ opinion, *Davidson v. Lake Marina Tower Condo. Ass’n*, 26-0298,
pp. 1-2 (La. App. 4 Cir. 4/30/26), ___ So.3d ___, ___, 2026 WL 1179651, *1,
observing:

[Tenant] filed a petition for damages against [Association] regarding damage to his condominium unit as a result of Hurricane Ida. He asserted that condensation caused damage to the exterior windows; the sliding glass balcony door; and the interior walls and floor of the unit. [Tenant] retained an expert who opined that the damage was a result of condensation due to a broken thermal barrier in the windows and doors caused by the strong wind forces of the hurricane. [Association] retained as an expert, Larry M. Oliver Enterprises, Inc., who concluded that the condensation was the result of an unvented clothes dryer installed in [Tenant’s] unit. [Tenant’s] property insurer, AIG Claims, Inc., also retained an expert, Timothy Hassenboehler,

¹ *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

P.E., on behalf of EFI Global, who concurred with [Association's] expert and determined that the condensation was due to the improperly vented clothes dryer.

The parties filed cross motions for summary judgment and in opposition to [Tenant's] motion for summary judgment, [Association] offered the expert reports of Larry M. Oliver Enterprises, Inc. and Timothy Hassenboehler, P.E. to demonstrate that the damage to [Tenant's] unit was not caused by Hurricane Ida. [Tenant] subsequently filed a "Motion to Continue Hearing on Cross Motions for Summary Judgment and to Schedule Hearing Pursuant to La. C.C.P. art. 1425(F)." In pertinent part, [Tenant's] motion sought to exclude the expert reports of Larry M. Oliver Enterprises, Inc. and Timothy Hassenboehler, P.E. [Tenant] argued that the reports were not based on sufficient facts and data. Specifically, [Tenant] maintained that the reports are not reliable, and do not comply with La. C.E. art. 702(A)(2), because the inspection of the unit occurred in weather where the ambient exterior temperature was approximately 79°F. Since [Tenant] testified in his deposition that the condensation issues only occur when the ambient temperature is below approximately 44°F or 45°F, he argued that both reports offered by [Association] are unreliable. [Association] opposed the motion, contending that the expert reports are sufficient and comply with La. C.E. art. 702(A)(2). At the hearing on [Tenant's] motion, the trial court stated that "the evidence that is objected to is going after the character of the evidence, which should be attacked by cross-examination through trial and not through a *Daubert* hearing." By judgment dated April 7, 2026, the trial court denied [Tenant's] motion and ordered that both expert reports would "remain in the record."

Citing the trial court's failure to comply with the applicable procedural requirements for ruling on the *Daubert* motion, this Court granted Tenant's prior writ, reversed the trial court, and remanded. In so doing, this Court observed that the trial court failed to make specific factual findings, legal conclusions, or reasons for judgment addressing La. C.E. arts. 702-05. This Court, thus, decided the prior writ based solely on procedural grounds. We vacated the trial court's April 7, 2026 judgment denying Tenant's motion to exclude the expert reports of Larry M. Oliver Enterprises, Inc. and Timothy Hassenboehler, P.E. (the "Reports"). We

remanded the case to the trial court for a new hearing to consider Tenant's motion to exclude the Reports and ensure compliance with La. C.C.P. art. 1425(F).

On remand, the trial court held another hearing and ruled in Tenant's favor, excluding the Reports. In so doing, the trial court, agreeing with Tenant, observed:

Hebert v. Brazzel, [393 So.2d 135 (La. App. 3d Cir. 1980) (the "*Brazzel* case"),] states evidence of an experiment is inadmissible unless the circumstances under which it was made were substantially similar to the circumstances prevailing at the time of the occurrence involved in the controversy. . . . Here, the expert testimony is not found to be based on sufficient facts or data which would lead the trier of fact to determine the manner in which the experiments were conducted was rooted in the scientific — in sound scientific knowledge; therefore, instructed by Louisiana law, guiding case law, and examination of the reports at issue, the motion is hereby granted.

This writ followed.

Discussion

The applicable standard of review governing a trial court's ruling on a *Daubert* motion is the abuse of discretion standard. *See Certain Underwriters at Lloyd's London v. United States Steel Corp.*, 19-1730, p. 1 (La. 1/28/20), 288 So.3d 120, 121 (observing that "district court is afforded broad discretion in its consideration of evidentiary matters, including motions *in limine*"). After consideration of the instant application for supervisory writ before this Court and the applicable law, we grant the writ, finding that the trial court abused its discretion in granting Tenant's *Daubert* motion and excluding the Reports.

The governing law on this issue is Louisiana Code of Evidence art. 702(A).² "The focus of the [trial court's function as] gatekeeper under Code of Evidence

² Louisiana Code of Evidence art. 702(A) provides:

[art.] 702 ‘must be solely on principles and methodology, not on the conclusions that they generate.’” *Fussell v. Roadrunner Towing & Recovery, Inc.*, 99-0194, p. 5 (La. App. 1 Cir. 3/31/00), 765 So.2d 373, 377 (quoting *Daubert*, 509 U.S. at 595). “[I]t is well-settled that the character of the evidence upon which an expert bases his opinion affects only the weight to be afforded to the expert’s conclusion and does not make his opinion evidence inadmissible under *Daubert*.” *Bryant v. State*, 23-00731, p. 1 n.1 (La. 10/10/23), 370 So.3d 1061, 1062 (citation omitted).

Here, the trial court, in its prior ruling, reached the correct conclusion—that “the evidence that is objected to is going after the character of the evidence, which should be attacked by cross-examination through trial and not through a *Daubert* hearing.” The trial court’s reliance on the *Brazzel* case to reach a contrary result is misplaced. As Association points out, the experts’ statements in the Reports documenting the temperatures taken at the time of the inspections were not an indication that an experiment was conducted by either expert. Regardless, any argument regarding the temperatures goes to the character of the evidence and is not a sufficient ground to exclude the Reports. Accordingly, we find the trial court abused its discretion in excluding the Reports.

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (1) The expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (2) The testimony is based on sufficient facts or data;
- (3) The testimony is the product of reliable principles and methods; and
- (4) The expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.

In sum, we grant Association's writ, vacate the trial court's June 12, 2026 judgment, and remand.

WRIT GRANTED; JUDGMENT VACATED; AND REMANDED