

NUMBER 03-0916

COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

ALLEAN CURTIS

VERSUS

COLUMBIA DOCTOR'S HOSPITAL OF OPELOUSAS, ET AL.

**SAUNDERS, J., dissenting.**

I must respectfully dissent, in part, from the majority opinion, specifically as to the trial court's decision to discount the testimony of the plaintiff's expert witness, Dr. Samuel Richardson, a physician specializing in Emergency Room medicine. The trial court explained that it was "doubtful that [the expert] could or would meet the *Daubert/Foret* test relative to rehabilitative nursing care." While the trial court questioned whether Dr. Richardson would meet the *Daubert* standard for admissibility of expert opinion evidence, the court did not find his testimony inadmissible, it merely chose to discount his testimony due to this perceived failure under the *Daubert/Foret* standard. I find this basis for discounting Dr. Richardson's testimony to be manifestly erroneous.

The *Daubert* standard, established for determining the admissibility of expert testimony, is intended to ensure that scientific testimony is both relevant and reliable. *State v. Foret*, 628 So.2d 1116 (La.1993). This requirement recognizes that the rules on expert testimony relax the standard requirement of first-hand knowledge on the part of the witness, which is deemed to be justifiable where the expert's opinion has "a reliable basis in the knowledge and experience of his discipline." *Id.* at 1122. I find

that the witness's extensive experience in hospital care would render him eminently qualified to state opinion evidence on the hospital's implementation of its Fall Alert Program. Moreover, absent the trial court specifically finding Dr. Richardson's testimony inadmissible under *Daubert*, it did not present sufficient grounds for discounting Dr. Richardson's testimony. When a trial court commits manifest error, the appeals court conducts a de novo review of the record and, where possible, should render a decision. I do not feel this procedure is appropriate for this case. Therefore, I would remand this matter to the trial court for a new trial with instructions that the testimony and opinions of Dr. Richardson should be given full weight.