2019 IL App (2d) 171035-U
No. 2-17-1035
Order filed January 28, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GABRIELA SOSA-GAINES,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 2011-L-001111
	)	
CAPITAL FITNESS, INC., d/b/a	)	
XSPORT FITNESS, and DON MYLES,	)	Honorable
	)	Kenneth Popejoy,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The denial of plaintiff's summary judgment motion merged with the general jury verdict for defendants on personal injury negligence action against fitness club, and plaintiff's failure to file special interrogatories barred appellate argument that jury instructions were misleading. The trial court did not abuse its discretion in barring plaintiff from characterizing personal trainer's action as "chiropractic."

¶ 2 Plaintiff, Gabriela Sosa-Gaines, filed a negligence action against her fitness club, defendant Capital Fitness, Inc., d/b/a XSport Fitness, and her personal trainer, defendant Don Myles, for injuries she allegedly suffered when the trainer pressed down in the area of her spine

to relieve her discomfort during a training session. Plaintiff characterizes the incident as a negligent "chiropractive type of adjustment maneuver."

¶ 3 Before the injury, plaintiff signed a membership agreement and a personal training agreement, which each contain an exculpatory clause that formed an affirmative defense asserted by defendants. The trial court determined that whether the clause covers the trainer's action is a question of fact, but plaintiff claims that it is a question of law. Plaintiff filed motions to strike the affirmative defense and for summary judgment, which were denied, and a jury returned a general verdict for defendants.

¶ 4 On appeal, plaintiff argues that the exculpatory clause does not cover a "chiropractic maneuver" performed by a personal trainer. First, plaintiff argues that the interpretation of the clause should have been decided in her favor by the trial court rather than left to the jury. Second, she alleges that the jury was misled by instructions that did not adequately spell out that her trainer had performed a "chiropractic maneuver." She argues that the court should have instructed the jury that the exculpatory clause represented the affirmative defense of assumption of risk (see Illinois Pattern Jury Instructions, Civil, No. 13.01 (2d ed. 1971)) or should have used some unspecified nonpattern instruction to explain the exculpatory clause. Third, plaintiff claims that she was wrongly barred from eliciting testimony from the trainer and arguing to the jury that he had performed a "chiropractic maneuver." Plaintiff did not present an expert medical opinion that the trainer had done so.

¶ 5 Defendants respond that the merger rule precludes review of the trial court's denials of plaintiff's motions for summary judgment and to strike the affirmative defense. Defendants also argue that the evidence supported the jury's verdict and that plaintiff's failure to file special interrogatories makes it impossible to know if the jury was misled by the instructions. Finally,

defendants assert that the court did not abuse its discretion in barring plaintiff from characterizing the trainer's action as a "chiropractic maneuver." We affirm.

¶ 6 I. BACKGROUND

¶ 7 On September 29, 2011, plaintiff filed a one-count complaint for negligence. Plaintiff alleged that Capital Fitness Inc., d/b/a XSport Fitness, owned and operated a physical fitness facility providing exercise equipment, classes, personal training services, and physical fitness services by and through its agents and employees, including the trainer, who was acting as a duly authorized fitness and exercise instructor and personal trainer on October 14, 2009, the date of the incident.

¶ 8 Plaintiff alleged that, at all relevant times, she was a member of the facility and had purchased a physical fitness facility and services membership, as well as personal training services from the trainer. On October 14, 2009, plaintiff was performing her personal training program under the direction and control of defendants. She was instructed to lie on her stomach, take a deep breath, and exhale, whereupon the trainer forcibly pressed down on her spine. The trainer applied great force to her spine, causing injury.

¶ 9 Plaintiff alleged that defendants owed a duty of due care in providing personal training services and breached that duty by committing the following acts or omissions: (1) forcibly pressing on her spine with great force sufficient to injure; (2) placing her in a position where force on her spine was sufficient to injure; (3) instructing and directing her to exhale and forcibly pressing on her spine with force sufficient to injure; (4) repeatedly pressing on her spine; (5) failing to inform, warn, and obtain consent before applying force to her spine; (6) failing to inform warn, and obtain consent before forcibly pressing on her spine; (7) performing a "chiropractive type of adjustment maneuver" on her spine; and (8) otherwise being negligent in

providing personal training services. Plaintiff asserted that defendants' acts and omissions directly and proximately resulted in her spinal injury, as well as pain, suffering, disability, inability to lead a normal life, medical and healthcare expenses, and other damages.

¶ 10 On January 13, 2012, defendants filed an answer with the affirmative defense that plaintiff executed a membership agreement by which she waived all claims against defendants for injury occurring at the facility. The personal training agreement signed by plaintiff contains identical contractual language. The "exculpatory clause" provides in relevant part as follows:

> "Disclaimers, waiver, release and indemnification:
>
> * * *
>
> Member acknowledges that exercise, tanning, and use of the equipment and facilities of the company or of their affiliates naturally involves the risk of injury and medical disorders, including death, whether member, someone else, some activity or something causes it. Member agrees that member engages in all exercise, competition, and other activities operated, provided organized, arranged or sponsored by any of the company and their affiliates, either on or off the facility's premises, and uses all facilities and services of company and their affiliates, at such person's own risk. Such engagement and use includes, without limitation *** personal training or other instruction ***. You agree that you are voluntarily (a) participating in these activities and using the equipment and facilities based on such person's own assessment of the risks and benefits, and not upon the representation, advice, or urging of any of the company and their affiliates and (b) assuming all risk of injury *** that might result from such participation or use ***.
>
> Member shall hold company and their *** employees *** ('released parties') harmless from any and all loss, claim, injury, damage, and liability sustained or incurred

by member from or arising out of the negligent acts and omissions and any other acts and omissions and alleged negligent acts and omissions and any other acts and omissions, of any of the released parties, any person at the facility or anyone else, or any occurrence arising out of or related to this agreement or arising out of or in any way related to member's presence at or use of this facility ***. Without limiting the generality of the forgoing, you agree *** to release and discharge released parties from any and all claims or causes of action, and do hereby waive all rights that you may have *** to bring a legal action or assert a claim, for injury or loss of any kind against any of the released parties arising out of the negligent acts or omissions or other acts or omissions of any of the released parties or anyone else at the facility or at other facilities of the company or their affiliates or arising out of or relating to participation by you in any of the activities, or your use of the equipment, facilities or services that any of the company or their affiliates provides, or on account of any illness or accident ***. This hold harmless from and waiver and release of all liability includes, without limitation, (i) injuries, damages or diseases which may occur as a result of (a) your use of any facility or its improper maintenance, *** (d) negligent instruction or supervision *** and (ii) injuries or medical disorders resulting from exercise, or use of equipment or facilities, at the facility or any of the other facilities *** including but not limited to *** sprains, broken bones and torn muscles or ligaments, and injuries resulting from the actions and decisions made regarding medical or survival procedures.

* * *

This section disclaimer, waiver release and indemnification shall remain in effect perpetually. You acknowledge that you have carefully read this disclaimer, waiver,

release, and indemnification and fully understand that it is a release of all liability except to the extent prohibited by law."

¶ 11 The personal training agreement additionally provided as follows:

"Member covenants, represents and warrants that member has not received, is not receiving and shall not receive any medical advice from company or its agents or independent contractors. Member is not relying in any way upon any information supplied to member by company, its agents or independent contractors. Member represents and agrees that he/she is physically able to undertake personal training session and this training program and does so at member's sole risk.

Member acknowledges that company is not a licensee, medical care provider and does not and will not offer medical advice. Member understands that participating in any exercise session or program including, without limitation, the training session or program can result in serious physical injury, including but not limited to death and agrees to do so at his/her own risk.

¶ 12 Plaintiff filed motions to dismiss the affirmative defense and for summary judgment. Plaintiff argued that the trainer had acted as an unlicensed "chiropractic physician" under the Medical Practice Act of 1987 (225 ILCS 60/2, 49 (West 2016)), and therefore, defendants had violated the membership agreement, which provided in part that "none of the company is a medical care provider, that none diagnoses examines or treats any medical condition and that none offer medical advice."

¶ 13 Defendants filed an opposing motion for summary judgment, relying on the exculpatory clause. The trial court determined that genuine questions of material fact regarding the trainer's

action, the scope of his employment, and the exculpatory clause precluded summary judgment. The court denied the parties' motions.

¶ 14 The trial court instructed the jury on the elements of negligence:

> "The plaintiff has the burden of proving each of the following propositions:
>
> First, that the defendants acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant was negligent;
>
> Second, that the plaintiff was injured;
>
> Third, that the negligence of the defendants was a proximate cause of the injury to the plaintiff."

¶ 15 The court also gave, over plaintiff's objection, two instructions proposed by defendants which included their affirmative defense:

> "The defendants also set up the following affirmative defense
>
> Defendants claim:
>
> Plaintiff signed a Membership Agreement and signed a Personal Training Agreement by the terms of which she agreed to waive her right to make a claim for alleged injury.
>
> The plaintiff denies that she has waived her claim against the defendants for this alleged injury."
>
> * * *
>
> In this case, defendants have asserted the affirmative defense that:

Plaintiff *** signed a Membership Agreement and signed a Personal Training Agreement by the terms of which she agreed to waive her right to make a claim for this injury.

The defendants have the burden of proving this affirmative defense.

If you find from your consideration of all the evidence, that any one of the propositions the plaintiff is required to prove has not been proved, or that the defendant's affirmative defense has been proved, then your verdict shall be for the defendants. If, on the other hand, you find from your consideration of all the evidence that each of the propositions required of the plaintiff has been proved and that the defendants' affirmative defense has not been proved, then your verdict shall be for the plaintiff."

¶ 16 The trial court rejected plaintiff's version of a pattern instruction for assumption of risk, which stated as follows:

"In this case, defendant has asserted the affirmative defense that the plaintiff has assumed the risk *of a chiropractic adjustment*.

The defendant has the burden of proving this affirmative defense by proving each of the following propositions as to the plaintiff:

First, that the defendants and the plaintiff had a contract under which the plaintiff was to participate in activities which exposed her to the danger that resulted in the injury of which she complains, *namely a chiropractic adjustment to reduce subluxation/dislocation*;

Second, that the danger was one that ordinarily accompanies the activities contemplated in the contract;

Third, that the plaintiff had actual knowledge of this danger and understood and appreciated the nature and extent of the risk;

Fourth, that the plaintiff voluntarily subjected herself to this danger; and

Fifth, that this danger was the cause of the plaintiff's injuries and damages." (Emphases added.)

¶ 17 The jury returned a general verdict for defendants. Plaintiff's posttrial motion was denied, and plaintiff timely appeals.

¶ 18 II. ANALYSIS

¶ 19 A. Interpretation of Exculpatory Clauses

¶ 20 Before trial, plaintiff filed a motion for summary judgment and a motion to strike the affirmative defense, each arguing that, as a matter of law, the exculpatory clauses do not cover the "chiropractic maneuver" performed by the trainer. The trial court denied the motions on the ground that the issue was a question of fact to be decided by a jury. On appeal, plaintiff claims that the trial court erred in denying her motions for summary judgment and to strike the affirmative defense.

¶ 21 Summary judgment is appropriate only when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016). The purpose of summary judgment is not to try a question of fact but, rather, to determine whether a genuine issue of material fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). "A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adams*, 211 Ill. 2d at 43.

¶ 22 Generally, when a case proceeds to trial after a motion for summary judgment is denied, the order denying the motion for summary judgment merges with the judgment and is not appealable. *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 42; *Battles v. La Salle National Bank*, 240 Ill. App. 3d 550, 558 (1992)). However, where the issue raised in the summary judgment motion presents a question of law that would not be decided by the jury, the denial of summary judgment does not merge with the judgment and may be addressed on appeal under *de novo* review. *Young*, 2015 IL App (1st) 131887, ¶ 42.

¶ 23 In this case, plaintiff argued in her motions for summary judgment and to strike the affirmative defense that the trainer performed an unlicensed "chiropractic adjustment maneuver." However, the way the trainer touched plaintiff's back, the intensity of pressure applied, the location of the pressure, and the duration of the pressure are a few questions of historical fact that are relevant to whether the trainer's action was a "chiropractic maneuver" that might be excluded from the exculpatory clause. The denial of plaintiff's motions merged into the judgment because the ultimate issue that plaintiff raised in the motions – whether her alleged injury would be covered by the exculpatory clause – was a question of fact that was before the jury. Thus, plaintiff is precluded from appealing the denial of her summary judgment motion and the related motion to strike the affirmative defense.

¶ 24 B. Jury Instructions

¶ 25 Plaintiff also alleges several related errors involving the jury instructions. The purpose of jury instructions is to provide the jury with correct legal rules that can be applied to the evidence to guide the jury toward a proper verdict. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 507 (2002). A jury instruction "must state the law fairly and *distinctly* and must not mislead the jury or prejudice a party." (Emphasis in original.) *Dillon*, 199 Ill. 2d at 507. The decision on using a

nonpattern instruction rests within the sound discretion of the trial court. *People v. Bannister*, 232 Ill. 2d 52, 81 (2008). To determine if the trial court abused its discretion, "we look at the jury instructions, taken as a whole, to determine whether they fairly, fully, and comprehensively instructed the jury of the relevant legal principles. *Holland v. Schwan's Home Service, Inc.*, 2013 IL App (5th) 110560, ¶ 139. A reviewing court ordinarily will not reverse a trial court for giving faulty instructions unless they clearly misled the jury and resulted in prejudice to the appellant. *Schultz v. Northeast Illinois Regional Commuter R.R. Corp.*, 201 Ill. 2d 260, 274 (2002).

¶ 26 Plaintiff argues that the instructions on the exculpatory clause were misleading because they did not adequately explain that the trainer had performed a "chiropractic maneuver." She asserts that the court should have better informed the jury on the legal effect of the clause by giving her proposed instruction on assumption of risk and an as-yet unspecified non-pattern instruction specifically tailored to the clause.

¶ 27 Defendants respond that plaintiff failed to submit special interrogatories to test the general verdict, and that her omission bars appellate review of her claims of error in the jury instructions. We agree with defendants.

¶ 28 Special interrogatories are governed by section 2-1108 of the Code of Civil Procedure, which states in part as follows:

> "Unless the nature of the case requires otherwise, the jury shall render a general verdict. The jury may be required by the court, and must be required on the request of any party, to find specially upon any material question or questions of fact submitted to the jury in writing. Special interrogatories shall be tendered, objected to, ruled upon and

submitted to the jury as in the case of instructions. ***" 735 ILCS 5/2-1108 (West 2016).

¶ 29 A special interrogatory is a check on the general verdict that "tests the general verdict against the jury's determination as to one or more specific issues of ultimate fact." *Simmons v. Garces*, 198 Ill. 2d 541, 555 (2002). If a finding on a special interrogatory is inconsistent with the general verdict, the special finding controls, and the court must enter judgment consistent with that special finding. 735 ILCS 5/2-1108 (West 2016).

¶ 30 The "two-issue" rule provides that, when there is a general verdict and more than one theory is presented, the verdict will be upheld if there was sufficient evidence to sustain any theory, and a defendant who fails to request special interrogatories may not complain. *Dillon*, 199 Ill. 2d 483, 492; *Great American Ins. Co. of New York v. Heneghan Wrecking and Excavating Co., Inc.*, 2015 IL App (1st) 133376, ¶ 15. Likewise, when multiple defenses are raised, a general verdict for the defendant creates a presumption that the jury found in favor of the winning party on every defense raised. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 102 (2010).

¶ 31 Thus, when multiple claims, theories, or defenses are presented to the jury, the return of a general verdict without the submission of special interrogatories or separate verdict forms creates a presumption that the evidence supported at least one of the claims, theories, or defenses and will be upheld. This principle was reflected in an instruction given to the jury: "[i]f you find from your consideration of all the evidence, that any one of the propositions the plaintiff is required to prove has not been proved, *or* that the defendant's affirmative defense has been proved, then your verdict shall be for the defendants." (Emphasis added.)

¶ 32 In this case, defendants disputed plaintiff's negligence claim and alternatively argued the affirmative defense that she waived her rights by agreeing to the terms of the exculpatory clause. There was sufficient evidence to support either theory, which compels us to uphold the general verdict.

¶ 33 A reviewing court may reverse a jury verdict only if it is against the manifest weight of the evidence. *Snelson v. Kamm*, 204 Ill. 2d 1, 35 (2003). A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary, and not based upon any of the evidence. *Snelson*, 204 Ill. 2d at 35. As the reviewing court, we may not simply reweigh the evidence and substitute our judgment for that of the jury. *Snelson*, 204 Ill. 2d at 35.

¶ 34 It was plaintiff's burden to allege and prove all of the elements of her negligence claim, including a duty owed by defendants, a breach of that duty, and that the breach was the proximate cause of plaintiff's injuries. *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 256 (1999). Based on the evidence, the jury may have determined that the trainer did not breach a duty owed to plaintiff, and therefore concluded that defendants were not negligent. The trainer testified that he had been certified for more than 20 years. He testified to being trained and qualified to do the "mild adjustment" that he performed on plaintiff. He acknowledged certain personal training guidelines and protocols that govern his work and testified to his compliance with those rules. Plaintiff did not rebut the trainer's testimony. She did not present a witness to opine that the trainer's action amounted to the practice of chiropractic medicine or was somehow beyond the scope of his employment.

¶ 35 The trainer demonstrated for the jury how he pressed on plaintiff's back. He described the force as "gentle" or "light." The trainer described how he had pressed on other clients' backs

many times and never caused injury. The trainer's testimony could have supported a reasonable inference that he did not use force sufficient to injure plaintiff, and therefore defendants did not breach their duty of due care. Such a finding would have resulted in the general verdict for defendants, without the jury ever considering the affirmative defense.

¶ 36 Furthermore, defendants challenged proximate cause by presenting evidence that plaintiff did not even suffer an injury.[1] Plaintiff testified that she told the trainer that she felt "electrical zapping" in her back after the manipulation, and he recommended that she consult a chiropractor. About 10 minutes after the trainer pressed on plaintiff's back, she left the facility, picked up her 2 ½ year old child from daycare, and drove home. She told the jury that the zapping became more intense on the ride home, but she waited several days before seeking medical treatment. She described the pain as electrical, zapping, and stabbing in the area of her shoulder blades and up and down her back. But she also admitted to suffering a work injury to her back in 2005 from reaching for a box on a ledge.

¶ 37 Dr. Terry Nicola, plaintiff's treating physician, confirmed that plaintiff reported the injury. However, he conceded that, objectively, the electromyography (EMG) tests were normal and showed no sign of nerve injury. The disc tissue at T6-7 did not compress the spinal cord. Dr. Mark Lorenz, an orthopedic surgeon, examined plaintiff, and opined that the pain she reported was unexplained by any pathology at the T6-7 level of her spine. Dr. Lorenz did not recommend surgical intervention.

[1] In fact, during deliberations, the jury submitted a written question inquiring "what is 'the injury?' " The question implies that the jury debated whether plaintiff had proved the injury element of her negligence claim. If the jury determined that no injury had been proved, it would not have reached defendants' affirmative defense.

¶ 38 Defendants presented their own expert testimony that plaintiff's neurological exam results were normal and that plaintiff had a normal gait. Plaintiff submitted to thoracic magnetic resonance imaging (MRI) tests one month, two years, and four years after the incident. None showed any impingement on the nerves or the nerve roots or any stenosis. An expert testified that plaintiff had only age-related degenerative changes in the thoracic spine with no structural compression or signs of acute injury.

¶ 39 Because there was sufficient evidence presented on multiple theories separate from the exculpatory clause and no special interrogatory was requested, plaintiff may not complain about the exculpatory clause instructions. See *Dillon*, 199 Ill. 2d at 492. Also, with the return of a general verdict, there is a presumption that the jury found in favor of defendants on the elements of negligence. See *Lazenby*, 236 Ill. 2d at 102.

¶ 40 Plaintiff cites *Nassar v. County of Cook*, 333 Ill. App. 3d 289, 297 (2002), for the proposition that she is not required to tender special interrogatories to preserve for appeal an issue regarding jury instructions. In *Nassar*, the parties disputed whether injuries to quadruplets during a pregnancy were the result of the defendant hospital's negligence. The hospital prevailed at trial and argued that the absence of special interrogatories precluded appellate review of jury instructions regarding the element of proximate cause. The hospital argued that the general verdict created the presumption that the jury resolved the other elements of negligence in favor of the hospital and therefore, never reached the issue of causation. *Nassar*, 333 Ill. App. 3d at 295-96. The Appellate Court, First District, held that whether the jury was properly instructed on sole proximate cause did not require tendering a special interrogatory, but the court's holding rested entirely on the hospital citing a case that did not support application of the two-issue rule.

¶ 41 Since *Nassar* was decided, the First District has pointed out that Illinois courts, like the courts of most states, have adopted the two issue rule and that it applies to errors in instructions. *Strino v. Premier Healthcare Associates, P.C.*, 365 Ill. App. 3d 895, 904 (2006). *Strino* is more analogous to our case and better states the two-issue rule than *Nassar* does. *Nassar* does not compel a different result in our case.

¶ 42 C. Limitation of Testimony

¶ 43 Finally plaintiff claims that she should have been allowed to elicit testimony from the trainer that he performed a "chiropractic maneuver" on plaintiff. From his testimony alone, plaintiff wished to argue to the jury that the trainer was in fact performing a medical procedure specifically reserved to the practice of chiropractors. Defendants respond that, for plaintiff to describe the trainer's action as an action reserved to be performed only by chiropractors, she was required to provide expert testimony in the area, which she did not. We agree with defendants.

¶ 44 The admission of evidence falls within the sound discretion of the trial court, and we will not reverse the trial court unless that discretion was plainly abused. *Snelson*, 204 Ill. 2d at 33. "A court abuses its discretion only if it acts arbitrarily, without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law; or if no reasonable person would take the position adopted by the court." *Payne v. Hall*, 2013 IL App (1st) 113519, ¶ 12.

¶ 45 Defendants point out that plaintiff did not disclose any witness before trial that (1) practices chiropractic medicine, (2) can establish the standard of care for chiropractic medicine; (3) can establish that the trainer's action constituted a chiropractic maneuver specifically reserved to the practice of chiropractic medicine. Plaintiff also did not disclose a personal

training expert to opine that the trainer exceeded the scope of his training. Plaintiff's expert, Dr. Lorenz, was an orthopedic surgeon who conceded that he was not an expert in these areas.

¶ 46 To prevail in an action for medical malpractice, the plaintiff must show: (1) the standard of care in the medical community by which the treatment was measured; (2) that the defendant deviated from the standard of care; and (3) that a resulting injury was proximately caused by the deviation from the standard of care. *Johnson v. Ingalls Memorial Hospital*, 402 Ill. App. 3d 830, 843 (2010); see also *Hermitage Corp. v. Contractors Adjustment Co.*, 264 Ill. App. 3d 989, 996 (1993), *rev'd in part on other grounds*, 166 Ill. 2d 72 (1995) (elements of claim of legal malpractice are relevant in action involving the unauthorized practice of law). Plaintiff was required to establish the standard of care through expert testimony because, jurors who are not skilled in the profession, would not be equipped to judge the professional's conduct without it. See *Walski v. Tiesenga*, 72 Ill. 2d 249, 256 (1978). Under these circumstances, the trial court did not abuse its discretion in limiting the trainer's testimony and plaintiff's argument.

¶ 47 III. CONCLUSION

¶ 48 Whether plaintiff's alleged injury would be covered by the exculpatory clause was a question of fact that precluded summary judgment or granting her motion to strike defendants' affirmative defense. Even if the issue was a question of law, plaintiff failed to introduce expert testimony to establish that anything the trainer did amounted to a "chiropractic maneuver." Finally, without a special interrogatory, we do not know whether the jury ever considered the exculpatory clause. For the preceding reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 49 Affirmed.