2018 IL App (1st) 163423-U
No. 1-16-3423
April 24, 2018

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

VALERIE MOORE-COLVERT, Plaintiff-Appellant, v. KINIA SUTTON, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court Of Cook County. No. 15 L 202 The Honorable Lorna E. Propes, Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Where a plaintiff presents witnesses who provide uncontroverted testimony which establishes loss of a normal life, a jury's verdict that awards damages for future pain and suffering but fails to award damages for the loss of a normal life is inconsistent and against the manifest weight of the evidence and the plaintiff is entitled to a new trial on damages.

¶ 2 Valerie Medina, n/k/a Valerie Moore-Colvert, filed a complaint against Kinia Sutton for injuries she sustained when Sutton's car collided with her car on January 22, 2013. The jury awarded Moore-Colvert $40,307 in damages for lost wages, past and future pain and suffering, and past and future emotional distress, but the jury did not award any damages for

loss of a normal life and future medical expenses. Moore-Colvert appeals and maintains that the trial court erred when it denied her motion for a new trial on damages only because the jury's verdict was inconsistent and against the manifest weight of the evidence. Sutton argues that the trial court should be affirmed because Moore-Colvert filed an incomplete record and an incomplete statement of facts.

¶ 3 We find that because Sutton failed to file a motion to supplement the record (Ill. S. Ct. R. 329(eff. Jan. 1, 2006)), we will not consider her argument that Moore-Colvert filed an incomplete record. We also will not consider Sutton's argument that Moore-Colvert filed an incomplete statement of facts because Sutton failed to present this argument to the appellate court in a separate motion as required by Supreme Court Rule 361(a). We further find that Moore-Colvert presented witnesses who provided uncontroverted testimony which established her loss of a normal life claim (difficulty working, sleeping, going grocery shopping, and having sex) therefore, the jury's verdict awarding damages for future pain and suffering but failing to award damages for loss of a normal life was inconsistent and against the manifest weight of the evidence. Therefore, we hold that the circuit court erred when it denied Moore-Colvert's motion for a new trial.

¶ 4 Background

¶ 5 Moore-Colvert testified that in January of 2013, she was working as a professional dance teacher at four different locations: (i) she taught ballet and jazz at the Women's Athletic Club in Chicago; (ii) she taught Pilates classes at Pilates of Elmhurst; (iii) she taught Pilates and Sculpt at the Park District of Oak Park; and (iv) she taught Pilates, ballet, and a "booty barre" class at a company called Active Soles.

¶ 6 At trial, Moore-Colvert described Pilates as a series of "very slow, controlled movements" designed to "strengthen and stretch the whole body." As a Pilates teacher, she was not required to participate in the exercises and demonstrate how the different moves to the dance needed to be performed. With respect to Sculpt, she described the class as a "weight training class of squats, lunges, [and] biceps." In Sculpt, she was required to participate in the dance alongside her clients, demonstrating the use of the weights and generally how the dance was to be performed. Finally, booty barre was a class that incorporated dance and weight training into Pilates, which, similar to Sculpt, required her physical participation with the class.

¶ 7 Moore-Colvert testified that on January 22, 2013, while driving eastbound on Interstate-290 near Central Avenue, she was hit on the passenger side of her car by a car operated by Kinia Sutton. After the accident, Moore-Colvert drove her car home and rested for the remainder of the day.

¶ 8 On January 23, 2013, the day after her accident, Moore-Colvert went to see her physician because she woke up with a stiff neck, and with pain in her hand, back, and lower lumbar region. Due to her pain, she was unable to work for approximately two weeks.

¶ 9 On February 11, 2013, Moore-Colvert returned to work but with restrictions. She could teach Pilates class because this class did not require her physical participation with her class and she simply talked to her clients. She could not teach Sculpt, booty barre and ballet classes because those classes required her physical participation with her classes which increased her pain. She testified that she was restricted from working in Sculpt, ballet, and booty barre classes until May 30, 2013.

¶ 10 Approximately four weeks after the accident, sometime in March, Moore-Colvert attempted to have sexual intercourse with her husband for the first time since the accident. However, Moore-Colvert could not continue because she felt pain in her pelvis. She stated that her pelvic muscles "clenched together," "she couldn't move her legs" and "thought she might be going paralyzed." Thereafter, from March 2013 until August 2013, she saw a physical therapist for her pelvic pain at least twice a week.

¶ 11 Dr. Paul Kungul

¶ 12 Dr. Paul Kungul, a licensed and board certified family physician, testified that on January 23, 2013, a day after the accident, he examined Moore-Colvert and noted that she had a "strain of her neck, and low back, cervical strain and lumbar strain" and he prescribed medication.

¶ 13 On February 4, 2013, Dr. Kungul recommended that Moore-Colvert stop working because of her continued complaints of pain due to her lumbar strain. On February 11, 2013, Dr. Kungul noted that Moore-Colvert's lumbar strain was still causing her pain and that it was improving; therefore, he allowed her to return to work but restricted her from teaching in any physically demanding classes: Sculpt, ballet, and booty barre. On March 22, 2013, Dr. Kungul examined her and noted that the pain in her neck, and lower back was resolved "for the most part," but noted that she complained of having "considerably worsening pain with sex."

¶ 14 On May 30, 2013, Dr. Kungul told Moore-Colvert that she could return to her normal work activities including teaching her physically demanding classes: Sculpt, ballet, and booty barre. However, he still restricted her from engaging in "repetitive or adduction exercises"

because they would increase her pelvic pain which had not fully been resolved. He believed that Moore-Colvert's pelvic injury was permanent and would potentially cause flare-ups of pain for the rest of her life. He also believed that in the event that she had a flare up, Moore-Colvert would require therapy similar to the therapy that she had been receiving for her pelvis. Finally, Dr. Kungul testified that "[her] original injuries occurred on that date (January 22, 2013) and subsequent flares would be because of that initial injury."

¶ 15 On July 23, 2014, Moore-Colvert was involved in a second accident. Dr. Kungul saw Moore-Colvert six days after the accident, on July 29, 2014, and she complained about back and neck pain but no other injuries.

¶ 16 Maria Kronk

¶ 17 Maria Kronk, a licensed and board certified manual physical therapist, testified that she performed physical therapy on Moore-Colvert, at the recommendation of Dr. Kungul, from January, 23, 2013 until March 13, 2013.

¶ 18 On February 1, 2013, Moore-Colvert complained of stiffness in her neck and back and that she was unable to work due to the pain. On February 14, 2013, Moore-Colvert stated that she could not sleep the previous night due to pain in her sacrum, and that she was having a shooting pain down her lower extremity. On March 4, 2013, Moore-Colvert stated that she could stand for 40 minutes at a time but was still unable to perform all her jobs: Sculpt, ballet, and booty barre. On March 8, 2013, Moore-Colvert stated that she could not carry certain items and she was having a hard time grocery shopping. Kronk conducted a test that simulated Moore-Colvert's grocery shopping experience by having Moore-Colvert carry weights of different sizes. Moore-Colvert could not lift anything over 10 pounds but she

could carry 5 pounds for 200 feet. During the therapy sessions, Kronk conducted independent examinations to objectively verify Moore-Colvert's subjective complaints regarding her pain, and Kronk's objective findings were consistent with Moore-Colvert subjective complaints.

¶ 19 On March 11, 2013, Moore-Colvert stated that she had pain in her pelvis and had trouble walking after she had sex with her husband. Kronk noted that Moore-Colvert had been continually complaining of pain in her pelvic area during their therapy sessions, so Kronk referred her to Paul Thomas, a therapist who specializes in pelvic injuries.

¶ 20 Paul Thomas

¶ 21 Paul Thomas, a licensed and board certified manual physical therapist, testified that he first saw Moore-Colvert in March of 2013. Thomas stated that she complained of "pain in the sacrum pelvis occurring after intercourse." After conducting an independent exam, his findings were consistent with the pain she was reporting. He concluded that Moore-Colvert had a pelvic floor condition known as "hypertonic pelvic floor" which he described as "walking around with the muscle flexed all of the time." He testified that he believed the injury resulted from "a blunt force to the pelvis/lower back."

¶ 22 Moore-Colvert attended physical therapy sessions with Thomas twice a week, beginning in March, 2013 and ending August 2013. During this four month period, Thomas noticed that certain activities seemed to cause Moore-Colvert to have flare ups of pain: prolonged sitting, bowel movements, teaching her physically demanding classes and intercourse. In August of 2013, he stopped seeing Moore-Colvert, but would treat her when she had flare ups.

¶ 23 On July 23, 2014, a flare up occurred after Moore-Colvert's second accident. Thomas testified that even though Moore-Colvert was involved in the second accident, the flare up

was caused by the first accident on January 22, 2013. Thomas testified that Moore-Colvert would have flare-ups of pain from the pelvic floor injury "most likely throughout her lifetime" and that she would need therapy to alleviate the pain.

¶ 24 Other Witnesses

¶ 25 Sally Head, the owner of Active Soles where Moore-Colvert taught dance, testified that Moore-Colvert worked as a Pilates instructor for private individuals in less physically demanding classes and also taught group fitness classes which were much more physically demanding. Head stated that Moore-Colvert was unable to work for a month with her private clients and was also unable to teach her group classes for six months.

¶ 26 Shari Wenzal, Moore-Colvert's supervisor at the Park District of Oak Park, testified that Moore-Colvert taught dance to children from ages 3 to 10. Wenzal recalled that Moore-Colvert missed three weeks of work after her January 22, 2013 accident. Wenzal also noted that when Moore-Colvert returned to work, she was "very stiff," and that they decided not to offer the tap dance class Moore-Colvert was teaching. Finally, when Moore-Colvert returned, Wenzal had to make herself available for certain classes to help the children with stretching because Moore-Colvert could not sit on the floor and help the kids with their stretching.

¶ 27 Sandhya Chandrasekhar, one of Moore-Colvert's private clients for Pilates lessons, testified that she began working with Moore-Colvert in January of 2011. She testified that during their lessons, Moore-Colvert would physically participate in the same exercises she was teaching to Chandrasekhar. However, one day Chandrasekhar noticed that Moore-Colvert was not moving as well as she used to and seemed to be in pain. Moore-Colvert did not come to work for "the next few weeks." When Moore-Colvert returned to work, she no

longer participated in her lessons and just gave Chandrasekhar instructions from a seated position.

¶ 28 Kinia Sutton

¶ 29 Sutton testified and admitted that she was driving on I-290, when she hit Moore-Colvert's car. Sutton did not present any doctors, physical therapists, or any other witnesses to rebut Moore-Colvert's witnesses' testimony.

¶ 30 Jury Verdict

¶ 31 On September 13, 2016, the jury returned a verdict for Moore-Colvert and awarded her $40,307 in damages: (i) $10,307 for lost wages; (ii) $20,000 for pain and suffering experienced and reasonably certain to be experienced in the future; (iii) $10,000 for emotional distress experienced and reasonably certain to be experienced in the future; (iv) $0 for reasonable expenses of medical care, treatment and services reasonably certain to be received in the future; and (v) $0 for loss of a normal life experienced and reasonably certain to be experienced in the future.

¶ 32 Post-Trial Motion and Notice of Appeal

¶ 33 On November 11, 2016, Moore-Colvert filed a post trial motion requesting a new trial on damages only. Sutton filed a response to Moore-Colvert's motion for a new trial on November 22, 2013. On November 29, 2016, the circuit court denied Moore-Colvert's motion for a new trial.

¶ 34 On December 29, 2016, Moore-Colvert filed a notice of appeal and sought a reversal of (i) the September 13, 2016 judgment for Moore-Colvert in the amount of $40,307; and (ii)

the November 29, 2016 order denying Moore-Colvert's post-trial motion for a new trial. Moore-Colvert requests that this court remand this case with directions to the circuit court to allow a new trial on damages only or, in the alternative, to allow a new trial on liability and damages.

¶ 35 Analysis

¶ 36 Incomplete Record

¶ 37 The threshold question we must address is Sutton's contention that this court is mandated to affirm the circuit court's order that denied Moore-Colvert's post trial motion because Moore-Colvert filed an incomplete record. Sutton maintains that because Moore-Colvert failed to include in the record "50 exhibits entered into evidence at trial," we must "presume that the omitted evidence would have supported the trial court's decision." Sutton therefore urges us to affirm the circuit court's holding because we are unable to conduct a complete review of the circuit court's ruling.

¶ 38 We note that Supreme Court Rule 329 provides that "material omissions or inaccuracies... may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing court, or by the reviewing court or a judge thereof. Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth." Ill. S. Ct. R. 329(eff. Jan. 1, 2006).

¶ 39 Here, Sutton had an opportunity to correct the omission of the 50 exhibits in the record by obtaining a stipulation from her opponent or by filing a motion in the trial court and asking the trial court to supplement the record with the exhibits. Ill. S. Ct. R. 329(eff. Jan. 1,

2006). Sutton never availed herself of the procedure codified in Supreme Court Rule 329. We will not dismiss an appeal based on exhibits omitted from the record when Rule 329 provided Sutton with a vehicle to supplement the record. See *People v. Stokes*, 281 Ill. App. 3d 972, (1996). Moreover, this court will not accept an attempt to deny review through argument in a brief where the appellee failed to avail herself of the procedure codified in Rule 329 for correcting omissions from the record. *Stokes*, 281 Ill. App. 3d at 977.

¶ 40 We also note, however, that Supreme Court Rule 321 provides that "the record on appeal shall consist of the judgment appealed from, the notice of appeal, and the entire original common law record . . . [t]he common law record includes every document filed and judgment and order entered in the cause and any documentary exhibits offered and filed by any party . . .[t]he record on appeal shall also include any report of proceedings." Ill. S. Ct. R. 321(eff. Feb. 1, 1994).

¶ 41 Here, the record filed by Moore-Colvert included (i) the judgment appealed from, (ii) the notice of appeal, (iii) the original common law record, and (iv) several reports of proceedings that included references to the exhibits admitted at trial but missing from the record. Therefore, because the exhibits omitted from the record are referenced in the reports of proceedings, we see no need to dismiss Moore-Colvert’s appeal.

¶ 42 Sutton also argues that this court cannot provide a complete review of the case because Moore-Colvert's brief included an incomplete and misleading statement of facts which violates Supreme Court Rule 341(h)(6). Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2005). Rule 341 (h)(6) provides that an appellant's brief "shall contain the facts necessary to an understanding of the case stated accurately and fairly." Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2005). Supreme

Court Rule 361(a) provides that a party seeking relief based upon the appellant's violations of Rule 341(h)(6) shall do so "by filing a motion." Ill. S. Ct. R. 361(a) (eff. Jan. 1, 2015). In *John Crane Inc. v. Admiral Ins. Co.*, 391 Ill. App. 3d 693 (2009), this court was presented with a case where the appellee asked this court to strike the appellant's entire statement of facts based upon appellant's violations of Rule 341(h)(6). *John Crane Inc.* 391 Ill. App. 3d at 698. We held that while it is within this court's power to strike a party's statement of facts for violations of Supreme Court Rule 341(h)(6), a request to strike a party's statement of facts must be made in a concurrent motion and not simply requested in the appellee's response brief, and the statement of facts must hinder our review of the issue. *John Crane Inc.* 391 Ill. App. 3d at 698. Here, Sutton did not file a motion as required by Rule 361(a). Instead, she argued in her brief that Moore-Colvert's statement of facts was incomplete and misleading. Therefore, because Sutton failed to file a concurrent motion to strike Moore-Colvert's brief, and because the statement of facts does not hinder our review of the issues, we will consider the issues raised in Moore-Colvert's brief. *John Crane Inc.* 391 Ill. App. 3d at 698; Ill. S. Ct. R. 361(a) (eff. Jan. 1, 2015).

¶ 43 Motion for New Trial

¶ 44 First, Moore-Colvert argues that the circuit court erred when it denied her post trial motion for a new trial predicated on section 2-1202(b) of the Code of Civil Procedure (Code). 735 ILCS 5/2–1202(b) (West 2016). A circuit court's ruling on a motion for new trial is afforded considerable deference and will only be reversed in those instances where it is affirmatively shown that the court clearly abused its discretion. *Wardwell v. Union Pac. R.R. Co.*, 2017 IL 120438, ¶ 11. A court abuses its discretion when it denies a motion for a new

trial where the jury's verdict is against the manifest weight of the evidence. *Maple v. Gustafson*, 151 Ill. 2d 445, 455 (1992). 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." *Gustafson*, 151 Ill. 2d at 454.

¶ 45 Moore-Colvert argues that the circuit court erred when it denied her motion for a new trial on damages only because she presented sufficient evidence to prove her claim of loss of a normal life. Moore-Colvert maintains that because the jury awarded her $40,307 in damages for lost wages, past and future pain and suffering, and past and future emotional distress, but failed to award her damages for loss of a normal life, the jury ignored the evidence at trial. Therefore, Moore-Colvert insists that the verdict was inconsistent and against the manifest weight of the evidence.

¶ 46 Sutton argues that the jury verdict was not against the manifest weight of the evidence because a jury does not have to automatically award damages for loss of a normal life simply because the jury awarded damages for lost wages, pain and suffering, and emotional distress. Sutton maintains that since these are all different types of damages, the verdict indicates that the jurors believed some of Moore-Colvert's allegations but did not believe the others and awarded her damages accordingly. Therefore, Sutton maintains that the verdict was not inconsistent and was not against the manifest weight of the evidence.

¶ 47 The Illinois Supreme Court first addressed inconsistent verdicts in *Snover v. McGraw*, 172 Ill. 2d 438 (1996), a personal injury case where the plaintiff testified that as a result of injuries she suffered in a car accident, she missed a few days of tennis from her school team

and several days of gym class but was back participating in her everyday activities soon after the accident. *Snover*, 172 Ill. 2d at 448. The court found that plaintiff's complaints of pain were subjective and inconsistent with objective symptoms of injury, and that plaintiff was also involved in two subsequent car accidents. *Snover*, 172 Ill. 2d at 442,448. Moreover, the defense called an expert who disputed the nature and extent of plaintiff's injuries and questioned whether plaintiff endured any pain and suffering. *Snover*, 172 Ill. 2d at 448. The jury awarded her damages for medical expenses but did not award her damages for pain and suffering. *Snover*, 172 Ill. 2d at 443.

¶ 48 The *Snover* court emphasized that the determination of whether a verdict is inconsistent "is best made by the trial court in a post-trial motion." *Snover*, 172 Ill. 2d at 449. In making this determination, the *Snover* court urged trial courts to "consider the distinction between subjective complaints of injury and objective symptoms." *Snover*, 172 Ill. 2d at 449. The *Snover* court noted that "in cases in which a plaintiff's evidence of injury is primarily subjective in nature and not accompanied by objective symptoms, the jury may choose to disbelieve the plaintiff's testimony as to pain." *Snover*, 172 Ill. 2d at 449.

¶ 49 Plaintiff argued that an award for medical expenses without an award for pain and suffering was inconsistent with and against the manifest weight of the evidence. *Snover*, 172 Ill. 2d at 443. The *Snover* court rejected plaintiff's argument and upheld the jury verdict, noting that the failure of the jury to award any damages for pain and suffering might have been due to the evidence of the subsequent car accidents. *Snover*, 172 Ill. 2d at 442. Finally, the *Snover* court emphasized that because the credibility of witnesses is significant in such cases, the plaintiff's ability to continue participating in everyday activities, the subjective

nature of her complaints, and the conflicting expert testimony, all may have played a part in the jury's decision not to award plaintiff damages for pain and suffering. *Snover*, 172 Ill. 2d at 448.

¶ 50 Loss of a Normal Life

¶ 51 Illinois Pattern Jury Instruction, Civil, No. 30.04.01 (herein IPI Civil 2017-18 ed.) provides, as an element of damages, for loss of a normal life experienced and reasonably certain to be experienced in the future. See IPI Civil (2017-18 ed.) No. 30.04.01. Loss of a normal life is defined as "plaintiff's diminished ability to enjoy life that the plaintiff has experienced [citations] which should include plaintiff's temporary or permanent inability to pursue the pleasurable aspects of life, such as recreation or hobbies." *Smith v. City of Evanston,* 260 Ill. App. 3d 925, 938 (1994)(quoting Michael Graham, *Pattern Jury Instructions: The Prospect of Over or Undercompensation in Damage Awards for Personal Injuries*, 28 DEPAUL L.REV. 33, 60 (1978)). In *Snelson v. Kamm*, 204 Ill. 2d 1 (2003), the Illinois Supreme court explained that the Illinois Pattern Jury Instructions committee adopted the term "loss of a normal life" to be used in jury instructions as an alternative to the term "disability," "where the trial court determines that “loss of a normal life” more accurately describes the element of damages claimed and would be less confusing to the jury." *Snelson,* 204 Ill. 2d at 31(citing Illinois Pattern Jury Instructions, Civil, No. 30.04.01(2000), Notes on Use.)

¶ 52 Several courts in Illinois have addressed inconsistent verdicts in cases such as ours where a jury has awarded damages for pain and suffering but failed to award damages for loss of a normal life. See *Obszanski v. Foster Wheeler Const., Inc.*, 328 Ill. App. 3d 550 (2002); *Barr*

v. Groll, 208 Ill. App. 3d 318 (1991). In *Obszanski* and *Barr*, the courts held that the verdicts were inconsistent where plaintiff presented uncontroverted evidence showing loss of a normal life, and the jury awarded damages for pain and suffering but not for loss of a normal life. *Obszanski*, 328 Ill. App. 3d at 552; *Barr*, 208 Ill. App. 3d at 321-322.

¶ 53 In *Obszanski*, the plaintiff argued that a jury's award of over $55,000 for present and future pain and suffering, medical expenses and lost earnings, but failure to award damages for disability, was inconsistent with the evidence presented at trial. *Obszanski*, 328 Ill. App. 3d at 554. The plaintiff testified that he injured his back at work on January 12, 1996, and due to the pain of his injury, plaintiff was unable to work and had surgery on March 11, 1996. *Obszanski*, 328 Ill. App. 3d at 556. After the surgery, plaintiff participated in physical therapy until May 1996, and was not medically released to return to work until June 1996. *Obszanski*, 328 Ill. App. 3d at 556. Plaintiff further testified that after finishing therapy, he still had pain in his legs and stiffness in his back and as a result, he was no longer able to play certain games with his children and he could not play or coach sports. *Obszanski*, 328 Ill. App. 3d at 556. The court found that the plaintiff's testimony was uncontroverted and showed that plaintiff was disabled. *Obszanski*, 328 Ill. App. 3d at 554. The *Obszanski* court held that, because plaintiff's testimony that he was disabled was uncontroverted, the jury's failure to make a disability award did not comport with the evidence. *Obszanski*, 328 Ill. App. 3d at 556.

¶ 54 In *Barr*, the court set aside a verdict where the jury awarded $10,000 in damages for past medical expenses, pain and suffering, lost wages but nothing for disability. *Barr*, 208 Ill. App. 3d at 321-322. In this case, seven healthcare specialists testified that plaintiff was

disabled as a result of a brain injury and that due to plaintiff's injuries, that he would never be able to maintain any type of competitive employment and that the condition was permanent. *Barr,* 208 Ill. App. 3d at 321. The defense did not present any medical evidence in rebuttal. *Barr,* 208 Ill. App. 3d at 322. The *Barr* court held that the jury's failure to award damages for disability was clearly erroneous and unjust and set aside the inconsistent verdict. *Barr,* 208 Ill. App. 3d at 322.

¶ 55 One court found where a plaintiff presented sufficient evidence but the jury disregarded the evidence, the jury erroneously failed to award damages for loss of a normal life. See *Torres v. Irving Press, Inc.*, 303 Ill. App. 3d 151 (1999). In *Torres,* the plaintiff filed a motion for a new trial and argued that the jury's award of $202,500, after being reduced 50%, for past and future pain and suffering, past and future medical expenses, and for past and future lost wages, but its award of $0 damages for loss of a normal life was improper. *Torres,* 303 Ill. App. 3d at 152. Plaintiff testified that after a motor vehicle collision, she was placed in a leg cast for over two months, and at the time of trial she could not carry laundry up and down the stairs, could no longer bathe her daughter, run and play with her children, or go dancing or shopping with her mother. *Torres,* 303 Ill. App. at 159. The plaintiff's testimony was corroborated by her son and boyfriend. *Torres,* 303 Ill. App. at 159. The court found that the "plaintiff presented sufficient evidence to establish this element (loss of a normal life) and the jury's award of $0 disregarded this evidence." *Torres,* 303 Ill. App. at 160.

¶ 56 Here, Moore-Colvert’s uncontroverted testimony established that due to pain from the accident on January 22, 2013 (i) she was completely unable to work as a dance teacher for two weeks; (ii) she was restricted to only working Pilates classes and was unable to work her

physically demanding classes, like Sculpt, ballet and booty barre, from January 23, 2013 until May 30, 2013; (iii) she had difficulty sleeping and going grocery shopping between January 23, 2013 and March 13, 2013, and (iv) she had difficulty and pain during sex between March 2013 and August 2013. We find that Moore-Colvert's uncontroverted testimony was corroborated by her physician, her physical therapists, her former employers, and her former client. *Torres*, 303 Ill. App. at 159. We also find that Moore-Colvert's subjective complaints regarding her pain were corroborated by objective findings of her physician and her physical therapists. We further find that Moore-Colvert's witnesses' testimony was not rebutted by Sutton. Although Moore-Colvert returned to work, we find that Moore-Colvert's uncontroverted witnesses' testimony established that she had a diminished ability to enjoy the pleasurable aspects of her life and an inability to resume her other life activities such as performing all dance routines at work, shopping, and having sex with her husband. *Obszanski*, 328 Ill. App. 3d at 556; *Barr*, 208 Ill. App. 3d at 321-322; *Torres*, 303 Ill. App. at 159; See also *Florida Power & Light Co. v. Robinson*, 68 So. 2d 406, 414 (1953) (the inability to have sex has been deemed loss of normal life). Finally, like *Obszanski*, *Barr*, and *Torres*, Moore-Colvert was awarded damages for future pain and suffering but was not awarded damages for loss of a normal life. *Obszanski*, 328 Ill. App. 3d at 552; *Barr*, 208 Ill. App. 3d at 321-322; *Torres*, 303 Ill. App. 3d at 152. Therefore, following *Obszanski*, *Barr* and *Torres*, we hold that the circuit court erred when it denied Moore-Colvert's motion for a new trial because the jury's failure to award damages for loss of a normal life was inconsistent with the other damage awards and against the manifest weight

of the evidence. *Obszanski,* 328 Ill. App. 3d at 552; *Barr,* 208 Ill. App. 3d at 321-322; *Torres,* 303 Ill. App. 3d at 160.

¶ 57 Future Medical Expenses

¶ 58 We note that Moore-Colvert also argues that it was improper for the jury not to award her damages for future medical expenses. Because we conclude that Moore-Colvert is entitled to a new trial on damages, we need not address this claim of error.

¶ 59 New Trial on Damages Only

¶ 60 The Illinois Supreme Court has held that "a new trial limited to the question of damages will only be granted where (1) the jury's verdict on the question of liability is amply supported by the evidence; (2) the question of liability and damages are sufficiently distinct such that a trial limited to the question of damages would not be unfair to the defendant; and (3) the record does not suggest that the jury reached a compromise verdict." *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill. 2d 306, 319-320 (1987); see also *State Farm Mutual Insurance Company v. Ellison*, 354 Ill. App. 3d 387, 390 (2004).

¶ 61 Here, considering the first element - - question of liability - - we find that Sutton admitted at trial that she hit Moore-Colvert's car. We also note that Sutton does not question liability in her brief. Therefore, there is ample evidence in the record that Sutton was the cause of and liable for Moore-Colvert's injuries.

¶ 62 Considering the second element - - whether questions of liability and damages are sufficiently distinct and separate. In *Ellison,* a case also involving a motor vehicle accident, the court found that the defendant admitted causing the car accident, and that damages are separate and easily determinable. *Ellison,* 354 Ill. App. 3d at 391. Therefore, the court held

that the issues of liability and damages were separate. *Ellison,* 354 Ill. App. 3d at 391. Additionally, in *Merrill v. Hill*, 335 Ill. App. 3d 1001 (2002), a case also involving a motor vehicle accident, the court found that because the jury was not instructed on comparative negligence, the issues of liability and damages were sufficiently distinct that a trial limited to damages would not be unfair to the defendant. *Merrill*, 335 Ill. App. 3d at 1008. Here, Sutton admitted causing the collision and Sutton's injuries, and the jury was not instructed on comparative negligence. Therefore, because Sutton admitted to causing the collision and because the jury was not instructed on comparative negligence, we find that the issues of liability and damages are distinct and separate, and a trial on damages only would not be unfair to Sutton.

¶ 63 Finally, with regard to the third element - - whether the jury reached a compromise verdict. In *Sommer v. City of Taylorville*, 59 Ill. App. 3d 765 (1978), the court stated that "[t]o test whether a verdict resulted from a compromise on the question of liability it must be determined if the verdict on the issue of liability was supported by the evidence" and that "[t]he evidence of liability must be so clear that there is no real issue on this point for a second jury to try." *Sommer,* 59 Ill. App. 3d at 767. Here, we find that the evidence clearly establishes that Sutton was liable. Sutton testified that she hit Moore-Colvert's car, which was the cause of Moore-Colvert's injuries. Accordingly, we find that the evidence clearly supports a finding that Sutton was liable for the January 23, 2013 accident and that there is no liability issue for a second jury to try in this case.

¶ 64 Conclusion

¶ 65 We find that because Sutton failed to file a motion to supplement the record, we will not consider her argument that Moore-Colvert filed an incomplete record. We also find that we need not consider Sutton's argument that Moore-Colvert filed an incomplete statement of facts because Sutton did not present this argument to the appellate court in a separate motion as required by Supreme Court Rule 361(a). We further find that Moore-Colvert presented witnesses who provided uncontroverted testimony on her loss of a normal life claim (difficulty working, sleeping, going grocery shopping, and having sex) therefore, the jury's verdict awarding damages for future pain and suffering but failing to award damages for loss of a normal life was inconsistent and against the manifest weight of the evidence. Accordingly, we find that the circuit court erred when it denied Moore-Colvert’s motion for a new trial on damages.

¶ 66 Affirmed as to liability; reversed and remanded for a new trial on damages only.