[Cite as *Wilson v. Humility of Mary Health Partners, Inc.*, 2020-Ohio-3628.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

SHELLER WILSON,

Plaintiff-Appellant,

v.

HUMILITY OF MARY HEALTH PARTNERS, INC., dba ST. ELIZABETH HEALTH CENTER, et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 19 MA 0065

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2018 CV 200

BEFORE:
Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed.

Atty. Thomas P. Ryan, Atty. Daniel J. Ryan, Ryan, LLP, 55 Public Square, 21st Floor, Cleveland, Ohio 4411, for Plaintiff-Appellant, Sheller Wilson

Atty. Jeffrey A. Leikin, 55 Public Square, Suite 2100, Cleveland, Ohio 44113, for Plaintiff-Appellant, Sheller Wilson

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Atty. Michael Hudak, Roetzel & Andress, LPA, 222 South Main Street, #400, Akron, Ohio 44308, for Dismissed Parties Estate of Joseph Ambrose, M.D., Stephen Evan, M.D., and the Comprehensive Surgical Group of Northeast Ohio, Ltd.

Dated: June 30, 2020

WAITE, P.J.

{¶1} Appellant Sheller Wilson appeals the May 7, 2019 Mahoning County Common Pleas Court judgment entry granting Appellee Rema Malik's partial motion for summary judgment. For the reasons that follow, the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} At the time period in issue, Wilson was 65 years old. She had a medical history that included pain and discomfort in her abdomen. In late 2016, Wilson sought consultation with her primary physician, Dr. Joseph Ambrose, Sr. He recommended a surgery consult with his son, Dr. Joseph Ambrose, Jr. (Ambrose).

{¶3} Wilson met with Ambrose on December 27, 2016. Following evaluation, it was determined that she had an abdominal hernia and Ambrose recommended laparoscopic surgery. According to Wilson, Ambrose told her at the evaluation that he would be performing the surgery. Also according to Wilson, Ambrose did not discuss risks of surgery nor other treatment options. Wilson told Ambrose she would proceed with the surgery and it was scheduled for January 23, 2017.

{¶4} On January 23, 2017, Wilson arrived at St. Elizabeth Medical Center in Boardman, Ohio to check in for her surgery. She was presented with a form titled

"CONSENT FOR TREATMENT, PAYMENT AND HEALTH CARE OPERATIONS." Both parties acknowledge that this form did not list any physicians or the procedure to be performed. Wilson signed the form.

{¶5} After Wilson was transported to a preoperative holding area accompanied by her husband, a nurse presented her with a second form entitled "Consent for Medical and or Invasive Procedure." This form listed Ambrose by name as the physician who was to perform the surgery. No other physicians were listed. However, the form did state that Ambrose would perform the procedure with, "such assistants as designated, to assist, and administer and perform" surgery on Wilson. Wilson also signed the second consent form and was taken to the operating room. While in the operating room, prior to being administered anesthesia, Wilson asked to speak to Ambrose twice. According to Wilson, she was told he was in the hall outside the operating room but she was never given the opportunity to speak with him prior to surgery. Both parties acknowledge that Wilson was never introduced to Appellee Rema Malik, a resident surgeon, either prior to or after her surgery, and was never told Malik would be performing any part of her surgery. According to the operative notes made part of this record, Malik actually performed the majority of Wilson's procedure with Ambrose attending.

{¶6} During the operation, Wilson's small intestine was lacerated. This injury was not recognized during her surgery. It was not until Wilson's condition deteriorated and she had undergone several more evaluations, including a second surgery, that the laceration was detected. At some point, Wilson suffered cardiac arrest and had to be resuscitated. Wilson remained hospitalized for several weeks before being released.

{¶7} On January 18, 2018, Wilson filed a complaint naming several defendants, including: Humility of Mary Health Partners, Inc. ("HMHP"); Comprehensive Surgical Group of Northeast Ohio, Ltd., ("CSGNEO"); Joseph Ambrose, Jr., M.D. ("Ambrose"); Steven Evan, M.D.; and Rema Malik, M.D. ("Malik"). The complaint alleged, among other things, lack of informed consent (Count II) and medical battery (Count III).

{¶8} On April 2, 2018, counsel for Ambrose filed a notice of suggestion of death. On June 19, 2018, Wilson filed a motion to substitute Ambrose with the Estate of Joseph Ambrose, Jr., M.D. The motion was granted on June 25, 2018.

{¶9} On April 5, 2019, Malik filed a motion for leave to file partial summary judgment instanter on Count II, lack of informed consent, and on Count III, medical battery. Wilson filed a motion in opposition. Malik filed a reply motion.

{¶10} On May 7, 2019 the trial court granted Malik's motion for partial summary judgment. The trial court held: (1) Malik assisted Ambrose as a medical surgical resident; (2) the consent forms executed by Wilson provided unambiguous written consent and complied with the requirements of R.C. 2317.54. On June 4, 2019, the trial court issued an amended judgment entry to include that there was no just reason for delay pursuant to Civ.R. 54. Wilson filed a motion to stay proceedings pending appeal which the trial court granted.

{¶11} Wilson resolved her claims against defendants Estate of Joseph Ambrose, M.D.; Steven Evan, M.D.; and CSGNEO for an undisclosed settlement amount. The confidential settlement was finalized while this appeal was pending. Those defendants are not parties to this appeal.

{¶12} Wilson filed this timely appeal.

ASSIGNMENT OF ERROR

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT GRANTED SUMMARY JUDGMENT IN FAVOR OF DEFENDANT REMA MALIIK, M.D. ON COUNT II (LACK OF INFORMED CONSENT) AND COUNT III (BATTERY) OF PLAINTIFF'S COMPLAINT.

{¶13} Wilson contends the trial court improperly granted Malik's partial motion for summary judgment because genuine issues of material fact exist regarding Count II of the complaint, alleging lack of informed consent, and Count III, medical battery.

{¶14} An appellate court conducts a *de novo* review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996).

{¶15} Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc., v. Gordon & Assoc., Inc.*, 104 Ohio App.3d 598, 603, 662 N.E.2d 1088 (8th Dist.1995).

{¶16} "[T]he moving party bears the initial responsibility of informing the trial court of the basis of the motion, and identifying those portions of the record which demonstrate

the absence of a genuine issue of fact on a material element of the nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt,* 75 Ohio St.3d 280, 296, 662 N.E.2d 264 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden of setting forth specific facts showing that there is a genuine issue for trial. *Id* at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn.,* 122 Ohio App.3d 378, 386, 701 N.E.2d 1023 (8th Dist.1997).

{¶17} The evidentiary materials to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327, 364 N.E.2d 267.

Count II – Lack of Informed Consent

{¶18} Under Ohio law, prior to performing a medical procedure a physician has a duty to inform the patient of the nature of the procedure to be performed, the probable consequences, any risks associated with the procedure, and expected benefits to be derived from the procedure. *Nickell v. Gonzalez,* 17 Ohio St.3d 136, 477 N.E.2d 1145 (1985). Consent for a surgical procedure may be given by a patient through an express writing, oral consent from the patient to the physician, or in limited circumstances through implied consent.

{¶19} The Ohio Supreme Court set forth the elements for the tort of lack of informed consent. It is established when:

> (a) The physician fails to disclose to the patient and discuss the material risks and dangers inherently and potentially involved with respect to the proposed therapy, if any;
>
> (b) the unrevealed risks and dangers which should have been disclosed by the physician actually materialize and are the proximate cause of the injury to the patient; and
>
> (c) a reasonable person in the position of the patient would have decided against the therapy had the material risks and dangers inherent and incidental to treatment been disclosed to him or her prior to the therapy.

Id. at syllabus.

{¶20} R.C. 2317.54 governs informed consent for a medical procedure and provides:

> No hospital, home health agency, ambulatory surgical facility, or provider of a hospice care program or pediatric respite care program shall be held liable for a physician's failure to obtain an informed consent from the physician's patient prior to a surgical or medical procedure or course of procedures, unless the physician is an employee of the hospital, home health agency, ambulatory surgical facility, or provider of a hospice care program or pediatric respite care program.

Written consent to a surgical or medical procedure or course of procedures shall, to the extent that it fulfills all the requirements in divisions (A), (B), and (C) of this section, be presumed to be valid and effective, in the absence of proof by a preponderance of the evidence that the person who sought such consent was not acting in good faith, or that the execution of the consent was induced by fraudulent misrepresentation of material facts, or that the person executing the consent was not able to communicate effectively in spoken and written English or any other language in which the consent is written. Except as herein provided, no evidence shall be admissible to impeach, modify, or limit the authorization for performance of the procedure or procedures set forth in such written consent.

(A) The consent sets forth in general terms the nature and purpose of the procedure or procedures, and what the procedures are expected to accomplish, together with the reasonably known risks, and, except in emergency situations, sets forth the names of the physicians who shall perform the intended surgical procedures.

(B) The person making the consent acknowledges that such disclosure of information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.

(C) The consent is signed by the patient for whom the procedure is to be performed, or, if the patient for any reason including, but not limited to, competence, minority, or the fact that, at the latest time that the consent is

needed, the patient is under the influence of alcohol, hallucinogens, or drugs, lacks legal capacity to consent, by a person who has legal authority to consent on behalf of such patient in such circumstances, including either of the following:

(1) The parent, whether the parent is an adult or a minor, of the parent's minor child;

(2) An adult whom the parent of the minor child has given written authorization to consent to a surgical or medical procedure or course of procedures for the parent's minor child.

Any use of a consent form that fulfills the requirements stated in divisions (A), (B), and (C) of this section has no effect on the common law rights and liabilities, including the right of a physician to obtain the oral or implied consent of a patient to a medical procedure, that may exist as between physicians and patients on July 28, 1975.

As used in this section the term “hospital” has the same meaning as in section 2305.113 of the Revised Code; “home health agency” has the same meaning as in section 3701.881 of the Revised Code; “ambulatory surgical facility” has the same meaning as in of section 3702.30 of the Revised Code; and “hospice care program” and “pediatric respite care program” have the same meanings as in section 3712.01 of the Revised Code. The

provisions of this division apply to hospitals, doctors of medicine, doctors of osteopathic medicine, and doctors of podiatric medicine.

{¶21} When a written informed consent form complies with the requirements of R.C. 2317.54, such consent is presumed to be valid and effective. *Bedel v. Univ. OB/GYN Assoc., Inc.*, 76 Ohio App.3d 742, 745, 603 N.E.2d 342 (1st Dist.1991). The party seeking to establish that informed consent was not given must establish by a preponderance of the evidence that he/she was incompetent or that consent was induced by fraud or bad faith. R.C. 2317.54. R.C. 2317.54 further provides that any use of a written consent form has no effect on the common law rights and liabilities associated with oral and implied informed consent. Therefore, a patient may give informed consent through a written form that does not comply with the requirements of R.C. 2317.54 and may still provide valid oral consent. *Joiner v. Simon,* 1st Dist. Hamilton No. C-050718, 2007-Ohio-425, ¶ 30. Hence, even in the absence of a valid written consent form, a physician is not precluded from obtaining oral consent. *Foreman v. Hsu,* 11th Dist. Trumbull No. 96-T-5559, 1998 WL 683941, *3 (Sept.30 1998).

{¶22} In the instant matter, Wilson signed two consent forms prior to her procedure. A close evaluation of both forms is required in order to determine whether they comply with R.C. 217.54. The first form presented to Wilson when she arrived at the hospital was entitled “CONSENT FOR TREATMENT, PAYMENT AND HEALTH CARE OPERATIONS,” attached as exhibit 4 to Wilson’s motion in opposition to Malik’s motion for partial summary judgment (“General Consent”). It reads, in pertinent part:

> 1. I am seeking medical care and treatment at Mercy Health. I consent to the rendering of such medical care and treatment as is deemed necessary by my physician/practitioner and other members of the medical staff and by Mercy Health and its employees. I also understand that there are risks of injury from medical care and treatment and I acknowledge that no guarantees have been made to me about the outcome of my care and treatment.
>
> 2. I understand that my care may include examinations, diagnostic tests, medical treatment, immunization administration, taking photographs/video and making audio recordings that may be used for my case and/or by Mercy Health for quality assurance purposes and clinical documentation, as well as health care operations purposes.
>
> 3. I understand that medical, nursing and allied health students train at this facility and may be involved in my care. I also understand resident physicians may also be involved in my care. All students and resident physicians are supervised by licensed and trained physicians, and I consent to care provided by them.

(1/23/17 General Consent.)

{¶23} The second form presented to Wilson in the preoperative room and before she was sedated was entitled "Consent for Medical and or Invasive Procedure", attached as exhibit 5 to Wilson's motion in opposition to Malik's motion for partial summary judgment ("Surgical Consent"). In reads, in pertinent part:

> I, undersigned patient, do hereby request and authorize Dr. Ambrose and such assistants as designated, to assist, and administer and perform upon Sheller A. Wilson the following procedure(s) Laparoscopic Ventral Hernia Repair With Mesh, Possible Open.
>
> * * *
>
> I am informed of the nature and purpose of the operation(s) and procedure(s), possible alternative methods of treatment, the risks involved, the possible consequences and the possibility of complications associated with the operation(s) and procedure(s). * * *
>
> I am also informed there are other risks and complications which can occur during the performance of any operation or surgical procedure. These include but are not limited to, blood loss, infection and cardiac arrest. I realize the practice of medicine and surgery is not an exact science, and I acknowledge no guarantees have been made to me concerning the results and or outcomes of the operation(s) or procedure(s).

(1/27/17 Surgical Consent.)

{¶24} The names "Ambrose," "Wilson" and the type of procedure are handwritten on the form. Wilson contends that Malik performed a majority of the procedure. Since Malik's name is not specifically listed on the form, she did not give informed consent for Malik to perform the procedure. Malik contends that the form unequivocally allowed

Ambrose to select any assistants he desired and that Malik only assisted Ambrose in performing the surgery.

{¶25} The record includes a DVD containing approximately 10,000 pages of medical records relating to the surgery, as well as patient notes regarding subsequent evaluations and the follow up surgery. A review of the record reveals that Malik physically performed a substantial portion of the procedure, with Ambrose supervising and physically performing certain tasks. Malik is noted as the author of the operative notes from the surgery, with Ambrose listed as the co-signer. The notes were dictated by Malik. The portions of the surgery performed by Malik include opening and closing the wound, placing surgical equipment in Wilson's abdominal cavity, inspecting the cavity with laparoscopic equipment, placing a surgical port, and dissecting adhesions. According to Malik's testimony, only one surgeon could use the surgical instruments at a time. (Malik Depo., p. 174.) Ambrose remained scrubbed and present during the entire operation. (Malik Depo., p. 213.) The record reveals that during the removal of scar tissue, Ambrose took over briefly before Malik resumed the surgery. (Malik Depo., pp. 168, 203.)

{¶26} Citing the First District's decision in *Bedel,* Wilson argues that without Malik's name listed, the consent forms are invalid for informed consent purposes. In *Bedel,* the First District held that the consent form signed by the patient did not indicate that a resident would be performing the procedure and thus did not comply with the statute. In *Bedel* the resident testified in an affidavit that he consulted with the patient prior to the procedure and informed her that he would be performing it, and the patient gave her oral consent. The plaintiff in *Bedel* provided no evidence to controvert this

testimony. Therefore, the court concluded that, despite the fact that the consent forms were invalid, the patient had given oral consent. *Id.* at 745.

{¶27} In this matter, the trial court concluded the consent forms signed by Wilson conformed to R.C. 2317.54. However, when a consent form does not accurately reflect the name of the physician who is actually performing the procedure, it does not comport with the requirements for a written informed consent document as required under R.C. 2317.54. Therefore, the forms in this case do not fully comply with R.C. 2317.54 and are not entitled to the presumption of validity afforded by the statute. *Bedel* at 745. This is not the end of our review, however. R.C. 2317.54 specifically provides that it does not operate to eliminate any common law rights or liabilities. Therefore, we must still determine from the record whether Wilson otherwise gave her informed consent for the procedure, bearing in mind the underlying elements necessary to establish the tort.

{¶28} In order to prevail in a claim for lack of informed consent, a plaintiff must demonstrate that: (1) the physician did not disclose the material risks and dangers associated with the procedure; (2) the unrevealed risks which should have been disclosed did, in fact, materialize and are the proximate cause of the plaintiff's injury; and (3) a reasonable person in plaintiff's position would have not have undergone the procedure had the risks been disclosed prior to the procedure. *Nickell v. Gonzalez,* 17 Ohio St.3d 136, 139, 477 N.E.2d 1145 (1985).

{¶29} Wilson testified that neither during her office visit prior to surgery, nor at any other time thereafter, did Ambrose ever explain to her the risks or complications associated with her procedure. (Wilson Depo., p. 28); (Wilson Aff.) She also testified that she did not know Malik, was not aware Malik would be involved in her procedure,

and had no conversations with Malik regarding risks or complications prior to having the procedure. (Wilson Depo., p. 32.) She never saw Malik or Ambrose prior to the surgery on the day of the procedure. (Wilson Aff.) Further, Wilson testified that Ambrose told her he was going to be performing her surgery. (Wilson Aff.) She did not know that a resident performed her surgery until after she filed the instant lawsuit. (Wilson Aff.)

{¶30} Appellees contend that Wilson failed in her complaint to argue that Malik owed any duty to disclose any risks to Wilson and that her complaint argues only that Ambrose had the duty to inform Wilson of the possible risks of her procedure. Thus, no liability can extend to Malik for the actions or inactions of Ambrose. Appellees also argue that both consent forms, when read together, are sufficient to show that Wilson provided informed consent to Malik's involvement in the procedure.

{¶31} It is undisputed that Wilson and Malik never met prior to the procedure. Further, Wilson testified that she was not aware that it was Malik who had performed the majority of the surgery until she filed the instant lawsuit. (Wilson Aff.) Malik testified that as a resident "[t]here were certain times when I would do the entire case or the majority of the case, yes, but always as an assistant surgeon with the primary surgeon being there at all times." (Malik Depo., p. 38.) We note that this record does not reflect that Wilson's healthcare providers used best practices in this matter leading up to her procedure. Notwithstanding Wilson's lack of any contact with Malik prior to surgery, and that Ambrose failed to meet with her prior to surgery on that day, we must consider the record before us and how it comports with the relevant law.

{¶32} In her deposition and in her affidavit, Wilson testified that Ambrose never informed her of the potential risks and complications of the procedure. (Wilson Depo., p.

28); (Wilson Aff.) However, the first consent form reads in part, "I also understand that there are risks of injury from medical care and treatment and I acknowledge that no guarantees have been made to me about the outcome of my care and treatment." Another paragraph in the first form also reads, "I also understand resident physicians may also be involved in my care. All students and resident physicians are supervised by licensed and trained physicians, and I consent to care provided by them." Wilson acknowledges that she read and signed this form.

{¶33} Importantly, the second form reads, in part, "I am informed of the nature and purpose of the operation(s) and procedure(s), possible alternative methods of treatment, the risks involved, the possible consequences and the possibility of complications associated with the operation(s) and procedure(s)." Despite that in her affidavits prepared for this litigation she make statements to the contrary, Wilson acknowledges that she read and signed this second form.

{¶34} We have previously held that when a patient has been fully advised of the nature of a procedure, and that there are risks and complications, and fails to inquire as to the nature of those risks, subsequent consent is an informed consent. *Casey v. Bitonte,* 7th Dist. Mahoning No. 82 C.C. 119, 1983 WL 4578, Nov. 16, 1983, *2.

{¶35} The consent forms signed by Wilson clearly state that she was informed of the potential risks and complications of the procedure. The forms also provide that Ambrose may have assistance from resident physicians in performing the procedure. Wilson voluntarily signed her consent to this provision. Wilson presented deposition testimony as well as an affidavit contending that she was never informed of potential risks or complications and was never informed that Malik would be performing the procedure.

However, a "nonmoving party may not avoid summary judgment by merely submitting a self-serving affidavit contradicting the evidence offered by the moving party." *Merino v. Levine Oil Ents., L.L.C.* 7th Dist. Columbiana No. 17 CO 0030, 2019-Ohio-205, ¶ 36. Wilson does not dispute that she read and signed the consent forms as presented by Appellees. She does not allege that she was incompetent or lured into signing by fraudulent means at the time. Therefore, Wilson has not presented evidence to overcome the evidence of informed consent as produced by Appellees.

{¶36} Accordingly, although we conclude the forms do not fully comply with the presumption of validity pursuant to R.C. 2317.54, the evidence in the record reflects that no genuine issue of material fact exists in this matter with regard to informed consent. Wilson signed forms declaring that she was informed of the possible risks. Thus, she fails to prove the first element of the tort of lack of informed consent, and summary judgment was proper on that count of Wilson's complaint.

Count III - Battery

{¶37} Count III of Wilson's complaint alleged battery, "AGAINST DEFENDANTS HMHP, AMBROSE, AND MALIK." (1/18/18 Complaint, p. 19.) In her complaint Wilson alleged she was informed that Ambrose would perform the entirety of her surgery, and that she was not informed that any other surgeon would also be involved. She further alleged that she "did not meet or otherwise know the identity of Defendant Rema Malik" and that she was never informed Malik would be performing any part of the surgery. She alleged she never gave express, written, oral, or implied consent for Malik to perform her surgery. (1/18/18 Complaint, pp. 19-20.)

{¶38} The tort of battery in the medical context differs from lack of informed consent. "In a medical setting, when a physician treats a person without consent, the doctor has committed a battery." *Watkins v. Cleveland Clinic Found.*, 130 Ohio App.3d 262, 279, 719 N.E.2d 1052 (8th Dist.1998). As this Court has held:

> It is imperative to differentiate between a claim of "lack of consent" and "lack of informed consent" for purposes of our review. * * * A lack of consent arises when an unauthorized touching occurs. A claim of lack of informed consent arises when a patient has not been *fully* advised of the material risks inherent in the procedure. (Emphasis in original.)

Barrette v. Lopez, 132 Ohio App.3d 406, 410-411, 725 N.E.2d 314 (7th Dist.1999), fn. 1.

{¶39} Moreover, unlike a claim for negligence which requires proof of duty, breach, causation and damages, a battery claim "does not require the proving of a duty and a breach of that duty, but rather requires proof of an intentional, unconsented-to touching." *Id.* at 411, citing *Anderson v. St. Francis – St. George Hosp. Inc.,* 77 Ohio St.3d 82, 84, 671 N.E.2d 225 (1996). "A physician who treats a patient without consent has committed a battery, even if the procedure is beneficial or harmless." *Barrette,* at 410-411 quoting *Lacey v. Laird,* 166 Ohio St. 12, 139 N.E.2d 25 (1956), paragraph one of the syllabus.

{¶40} Here, Wilson alleges Malik committed battery by performing her surgery without her express written, oral, or implied consent. Wilson also cites to evidence in the record that Malik performed the majority of the surgery.

{¶41} Appellees contend Wilson provided authorization for Malik's involvement when she signed the two consent forms because, when read together, the two forms allowed Ambrose to appoint a resident to perform any portion of the procedure.

{¶42} As noted above, the consent forms signed by Wilson do not completely comply with the requirements of R.C. 2317.54 because they do not include Malik's name and do not list the specific risks associated with the surgery being performed. Thus, they are not granted the statutory presumption. However, under the common law of informed consent, the evidence in the record produced at summary judgment by Appellees and uncontroverted by Wilson is that Wilson signed both the general consent form and the surgical consent form. As an adult, Wilson is presumed to have read and understood the forms she signed. The forms state that Wilson was informed of the risks of the procedure and that Ambrose may be assisted by a resident physician in performing the surgery. It is clear that Malik performed a substantial portion of the procedure and that she was under the supervision of Ambrose, who remained present for the entire procedure. Wilson acknowledged this was an option she permitted when she signed the two consent forms. While best practice was certainly to have included Malik's name and that Wilson be able to meet and discuss the procedure with Malik, the question here is not whether the ideal practice was followed, but whether Wilson consented to having "such assistants as designated" by Ambrose and/or the hospital, including nameless "resident physicians," be involved in performing her surgery. The record shows that she did. Therefore, no claim for medical battery can lie against Appellees under these facts.

{¶43} Based on the foregoing, although the two consent forms signed by Wilson do not completely comply with R.C. 2317.54, pursuant to the common law Wilson

acknowledged that she had been informed of the potential risks and complications of the procedure and that Ambrose may be assisted by a resident physician in performing the procedure. Wilson was not impaired or unduly influenced in any way when she made these acknowledgements. Wilson offered no evidence to the contrary that cannot be said to be self-serving. Therefore, the trial court did not err in granting summary judgment in favor of Appellees. Wilson's assignment of error is without merit and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.