

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

SHANNON MATTOX,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 115805
v.	:	
	:	
SOUTHWEST GENERAL	:	
HEALTH CENTER, ET AL.,	:	
	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: August 27, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-24-104385

Appearances:

Ryan, LLP, Thomas P. Ryan, and Daniel J. Ryan, *for appellant.*

Tucker Ellis LLP, Michael J. Ruttinger, Edward E. Taber, Jennifer L. Steinmetz, Madeline B. Dennis, and Tayler L. Gill, *for appellees.*

EILEEN T. GALLAGHER, J.:

{¶ 1} Appellant Shannon Mattox (“Mattox”) challenges the judgment of the trial court following a jury verdict in favor of appellees Southwest General Health Center, Southwest General Medical Group, Inc. (collectively “Southwest”), and

Natalya Dubchuk, MD (“Dubchuk”) (collectively “appellees”) on Mattox’s claims for medical negligence and failure to obtain informed consent. Mattox raises six assignments of error:

1. The trial court erred as a matter of law by excluding Appellant’s medical battery claim and refusing to submit the claim to the jury, despite evidence that Appellees exceeded the scope of Appellant’s express consent.
2. The trial court abused its discretion by denying Appellant’s Civ.R. 15(B) motion to amend the pleadings to conform to the evidence, where the issue of medical battery was tried by implied consent and fully litigated without objection.
3. The trial court erred by misapplying R.C. 2317.54 and treating the existence of a written consent form as dispositive, thereby foreclosing liability for conduct that exceeded the scope of Appellant’s consent.
4. The trial court erred by instructing the jury in a manner that improperly limited its consideration to informed consent and excluded the legally distinct issue of whether Appellees performed an unconsented-to touching.
5. The trial court erred in approving jury interrogatories that foreclosed consideration of Appellant’s scope-of-consent evidence and further erred by revising those interrogatories without notice to counsel in violation of Civ.R. 49(B).
6. The cumulative effect of the trial court’s errors deprived Appellant of a fair trial and requires reversal.

{¶ 2} After a thorough review of the record and the applicable law, we find the trial court did not err in excluding any evidence of Mattox’s unpled battery claim or in denying Mattox’s motion to amend the pleadings to conform to the evidence under Civ.R. 15(B). The court also did not err in the instructions or interrogatories provided to the jury, and we cannot determine where in the record Mattox claims

that an error occurred with regard to the application of R.C. 2317.54. Finally, because we have not found any errors, there was no cumulative error.

{¶ 3} We overrule Mattox’s assignments of error and affirm the judgment of the trial court.

I. Factual and Procedural History

{¶ 4} This matter involved a hysterectomy performed on Mattox by Dubchuk. At issue was whether Mattox had consented to the type of hysterectomy performed upon her, particularly with regard to the method of removal of her uterus. Understanding the nuances of this case requires some background about hysterectomies.

{¶ 5} A hysterectomy is a surgery to remove the uterus and treats many women’s health conditions.¹ One such condition is the existence of uterine fibroids, which are growths that form in the muscle of the uterus. There are different methods of removing the uterus during a hysterectomy, to wit: through the abdomen, through the vagina, or through small incisions in the abdomen in a laparoscopy. The choice of which method to use depends on different factors, such as the reason the patient is having the surgery and the size of the uterus.

{¶ 6} In an abdominal hysterectomy, the uterus is removed via an incision in the woman’s lower abdomen. With a vaginal hysterectomy, there is no abdominal

¹ American College of Obstetricians and Gynecologists, *Hysterectomy* (Sept. 2024), <https://www.acog.org/womens-health/faqs/hysterectomy> (accessed July 27, 2026) [<https://perma.cc/9CVF-H9T3>]. The American College of Obstetricians and Gynecologists is the governing body for women’s health providers. (Tr. 1074 and 1088.) Unless otherwise noted, all medical background was obtained from this source.

incision and the uterus is removed through the vagina. Vaginal removal causes fewer complications than abdominal or laparoscopic hysterectomy and has a shorter healing time. Women with larger uteruses are not able to have a vaginal hysterectomy.

{¶ 7} A laparoscopic hysterectomy utilizes several small incisions in a woman's abdomen. The uterus can be removed in small pieces through the incision, through a larger incision, or through the vagina (called a laparoscopic vaginal hysterectomy).

{¶ 8} A surgeon can also use a robot to assist in the laparoscopic hysterectomy. In a robotic hysterectomy, the surgeon places their fingers into controllers, and as the surgeon moves his or her fingers, the instruments inside the abdomen move. (Tr. 392.) It allows "precise dissection" and enables the surgeon to perform much more complicated surgeries than a laparoscopy without the robot. (Tr. 338.) There is also a camera reflecting a three-dimensional view inside the abdomen. (*Id.*) The surgeon is able to see and compare the size of the uterus and the vagina and determine whether vaginal removal is possible. (Tr. 575.)

{¶ 9} Morcellation is a surgical technique used to reduce the size of the uterus or fibroids by cutting the uterus into small pieces in order to permit the tissue to be removed through small incisions. (Tr. 476.) The technique uses a tool called a morcellator that has rotating blades that grind the uterus into smaller pieces. (Tr. 349.) Morcellation comes with significant risks of injury; the risks are greater

than those associated with a hysterectomy performed using vaginal removal. (Tr. 533 and 1212.)

{¶ 10} Mattox learned that she had uterine fibroids sometime around 2017. (Tr. 840.) At that time, they were small; they did not begin to bother her until 2023. Early that year, she visited the Southwest emergency room for severe abdominal pain on her left side. A CT scan of her abdomen and pelvis was taken that revealed an enlarged uterus and large fibroids. (Tr. 841.) An ultrasound was also performed that confirmed the same. (Tr. 353 and 842.) Because the fibroids were pressing on her ureter, which is the tube that carries urine from the kidney to the bladder, Mattox was referred to a urologist along with a gynecologist. (Tr. 842.)

{¶ 11} She first saw a urologist, who told her that she needed to see a gynecologist and that removal of the fibroids or her uterus would alleviate any urology issues. (Tr. 842-843.)

{¶ 12} Mattox then met with a gynecologist. (Tr. 843-844.) The gynecologist told her that she would need a hysterectomy. (Tr. 844.) Based upon the size of her uterus and fibroids, Mattox was told that she was going to need a robotic hysterectomy; however, the gynecologist that Mattox had seen did not operate, so she asked Dubchuk, a “robot specialist,” to see Mattox. (Tr. 845.) Ninety to ninety-five percent of the hysterectomies performed by Dubchuk were robotic. (Tr. 342.)

{¶ 13} Dubchuk examined Mattox’s abdomen and told Mattox that the largest fibroids could be surgically removed but that the smaller ones could not and would continue to grow. (Tr. 847-848.) Dubchuk informed Mattox that the better

option was a hysterectomy. (Tr. 848.) She told Mattox that because of the size of her uterus and fibroids, Dubchuk would need to perform a robotic hysterectomy. (*Id.*)

{¶ 14} Dubchuk explained the surgery to Mattox and stated that there would be four incisions in her abdomen. (*Id.*) She further told her that because of the size of the fibroids, she would not be able to remove Mattox's uterus vaginally and would have to use morcellation. (*Id.*) Dubchuk explained that a bag would be inserted to hold her uterus, fallopian tubes, and cervix and that they would then be morcellated and pulled out of one of the incisions. (Tr. 848-849.)

{¶ 15} On the day of her surgery, Mattox executed a consent form pertaining to three procedures: robotic hysterectomy, bilateral salpingectomy, and morcellation.²

{¶ 16} The consent form contained the following language:

2. PROCEDURE. I was informed of and I understand the nature of my medical condition, the benefits and the risks to me of the diagnostic or therapeutic procedure specified above, the alternatives to the procedure, and the possible consequences to my health if the procedure is not done. I recognize that there may be complications such as respiratory problems, infection, bleeding, allergic reactions, nerve injury, blood clot, heart attack, brain damage, and even loss of bodily function or life. Different or additional procedures may be performed depending on findings or events that may happen during the procedure.

...

6. NO GUARANTEE. I was informed and I understand that no promise or guarantee is made to me concerning a final result, outcome, or any

² A bilateral salpingectomy is the removal of the fallopian tubes.

problem that might occur during recuperation. I have discussed the content of this consent form with the practitioner named above. I have had all of my questions answered. I have read this form (or have had it read to me).

(Mattox exhibit No. 22.)

{¶ 17} Mattox also signed a separate consent form relating solely to morcellation, which stated:

Laparoscopic/Robotic hysterectomy/myomectomy (removing uterus, fibroid tumors, ovaries, or both, through very small incisions and with the help of a small camera) is associated with faster recovery, shorter hospital stay, less blood loss, fewer wound infections or complications in comparison to abdominal hysterectomy/myomectomy.

Morcellation (cutting or grinding up the uterus) is sometimes used in laparoscopic/robotic gynecologic (female reproductive) surgery, allowing the removal of the uterus through small incisions. The most common form is “power morcellation” used in laparoscopic surgery. This may be suggested if you have a large uterus/fibroid. Use of this technique may make it possible for you to have a laparoscopic hysterectomy/myomectomy rather than an abdominal hysterectomy/myomectomy.

...

(Emphasis in original. Mattox exhibit No. 22.) There is no dispute that Mattox read, understood, and signed both consent forms. (Tr. 916 and 921.)

{¶ 18} Due to the large size of Mattox’s fibroids as seen via ultrasound prior to her surgery, Dubchuk expected to have to use morcellation rather than vaginal removal. (Tr. 374.) However, during the surgery, Dubchuk determined that she could perform the removal vaginally and that morcellation would not be required. (Tr. 396.) Dubchuk ultimately performed the robotic hysterectomy and bilateral

salpingectomy, as listed in the consent form, but not the morcellation; she instead removed Mattox's uterus vaginally.

{¶ 19} After the surgery, Mattox experienced significant pelvic pain that affected her daily life and activities. She attributed the pain to the fact that Dubchuk had removed Mattox's uterus vaginally rather than using morcellation and had damaged Mattox's nerves. (Tr. 869.) Mattox maintained that she had been assured by Dubchuk prior to surgery that morcellation would be used and that "nothing" would be removed vaginally. (Tr. 848-849.)

{¶ 20} Mattox filed suit against Southwest, Dubchuk, University Hospitals, University Hospitals Health System, Inc., University Hospitals Medical Group, Inc., Kailish Kedia, MD, Cleveland Urology Associates, Inc., and John Does #1-#10, alleging two counts: negligence and failure to obtain informed consent.³ Mattox stated in her complaint that she had consented to a robotic hysterectomy with abdominal morcellation, not vaginal extraction. (Complaint, ¶ 11 and 12.) She further claimed that she had specifically requested that the robotic hysterectomy be completed using morcellation and did not agree to vaginal removal. (Complaint, ¶ 51 and 53.) She alleged that she was told that "all fibroids and other tissues would be removed abdominally and there would be nothing removed or delivered vaginally." (Complaint, ¶ 61.)

³ Prior to trial, defendants University Hospitals, University Hospitals Health System, Inc., University Hospitals Medical Group, Inc., Kailish Kedia, MD, and Cleveland Urology Associates, Inc., were dismissed from the action. The matter proceeded against Southwest and Dubchuk.

{¶ 21} Appellees answered, denying that the procedure had been performed without Mattox's consent; they further asserted consent as an affirmative defense. Following discovery, appellees sought leave to file a motion for summary judgment on the two claims specifically identified in Mattox's complaint: negligence and failure to obtain informed consent.

{¶ 22} Approximately two months before trial, Mattox filed her final pretrial statement wherein she stated that three claims were set forth in her complaint, to wit: negligence, lack of informed consent, and medical battery. Appellees sought leave to file a motion for summary judgment regarding the battery claim. Before the motions for leave were ruled upon, appellees also filed a motion in limine asking the court to preclude Mattox from presenting any evidence or argument relating to lack of consent or medical battery. The motion argued that Mattox's complaint did not plead a separate lack-of-consent claim and only alleged a claim for lack of informed consent under R.C. 2317.54.

{¶ 23} Mattox filed a brief opposing the motion in limine, arguing that appellees were given fair notice of her claim for medical battery because the complaint referred to the lack of "any" consent by Mattox and not simply the lack of "informed consent." She further asserted that she was not required to use the term "battery" in order to plead such a claim. Finally, she argued that a motion in limine was not the proper vehicle to extinguish her claim.

{¶ 24} The trial court granted appellees' motion in limine, finding that the complaint alleged two causes of action: (1) negligence and (2) failure to obtain informed consent. The court further held:

The tort of "medical battery" is a separate tort from "lack of informed consent." A battery claim, while sharing the elements of causation and damages, does not require the proving of a duty and a breach of that duty, but rather an intentional, unconsented-to touching. *Anderson v. St. Francis St. George Hosp.*, 77 Ohio St. 3d 82, 84 (1996).

The basic difference, therefore, in the elements between the torts of lack of informed consent and medical battery is that the former requires a showing that the medical professional obtained a consent that was insufficient under the circumstances and the latter involves the lack of any consent whatsoever. Here, a fair reading of the complaint is that only the tort of lack of informed consent was pleaded. The complaint mentions "informed consent" at least 24 times and battery not once. But most importantly, the plaintiff specifically alleges as "Count two" a "failure to obtain informed consent." Moreover, each of paragraphs 141, 142, 143, 144, 145 and 146 of the complaint under that heading refer to damages caused as "as a direct and proximate result of the failure to obtain the plaintiff's informed consent."

The only fair reading of this complaint is that it contains two causes of action, neither of which are "medical battery" or "lack of any consent."

(Sept. 22, 2025 journal entry, p. 1.) The court then denied both motions for leave to file motions for summary judgment.

{¶ 25} The matter proceeded to jury trial. Mattox testified on her own behalf and presented the testimony of her mother, father, partner, friend, a physician's assistant who participated in Mattox's care, a doctor she saw following the surgery to help her with her persistent pelvic pain, Dubchuk on cross-examination, and three expert witnesses.

{¶ 26} Appellees then presented the testimony of two expert witnesses and Dubchuk. Following the close of evidence, Mattox moved to amend the pleadings under Civ.R. 15(B), arguing that a medical-battery claim had been tried by implied consent when appellees did not object to the admission of evidence and testimony related to that claim. The trial court denied the motion.

{¶ 27} Mattox requested a jury instruction for her medical-battery claim, but the court declined to provide such an instruction.

{¶ 28} The jury returned a verdict in favor of appellees. In answering two of the seven interrogatories, the jury found that Mattox’s written informed consent was valid and that she had failed to prove that Dubchuk had not acted in good faith or that Mattox’s consent was obtained by fraudulent misrepresentation. Mattox stated the jury was also required to answer the third interrogatory. The court agreed, and the jury returned to the jury room to deliberate and answer the third interrogatory.

{¶ 29} While deliberating, the jury sent a question to the court, stating that the interrogatory did not make sense. The interrogatory stated as follows: “Regardless of your answers to Interrogatory Nos. 1 and 2, did the plaintiff prove by the greater weight of the evidence that Dr. Dubchuk provided adequate informed consent to plaintiff Shannon Mattox regarding the robotic[-]assisted hysterectomy performed on April 10, 2023?” The jury inquired whether the word “adequate” was actually supposed to be “inadequate.”

{¶ 30} The court determined that there had been a typographical error and that “adequate” should have been “inadequate.” The court asked counsel if they

agreed with giving the jury a corrected interrogatory for them to answer. Both counsel stated that they agreed with that solution.

{¶ 31} The corrected interrogatory was provided to the jury; they subsequently sent another note stating that the form was still not correct. The court explained how the interrogatory was to be read, and the jury was again told to consider the third interrogatory.

{¶ 32} After further deliberation, the jury answered the third interrogatory in the negative. The court asked counsel if they wished to “scrutinize” the interrogatories and verdict forms; both counsel declined. (Tr. 1462-1463.)

{¶ 33} Mattox then filed the instant appeal.

II. Law and Analysis

A. Existence of Final, Appealable Order

{¶ 34} Preliminarily, we must determine whether a final appealable order exists in this matter. A court of appeals is a court of limited jurisdiction. The Ohio Constitution limits appellate jurisdiction to the review of judgments or final orders. Ohio Const., art. IV, § 3(B)(2); *CitiMortgage, Inc. v. Roznowski*, 2014-Ohio-1984, ¶ 10. A final appealable order, as defined by R.C. 2505.02, includes an order that “affects a substantial right in an action that in effect determines the action and prevents a judgment[.]” R.C. 2505.02(B)(1). “An order determines the action and prevents a judgment when it ‘dispose[s] of the merits of the cause or some separate and distinct branch thereof and leave[s] nothing for the determination of the court[.]’” *Crown Servs. v. Miami Valley Paper Tube Co.*, 2020-Ohio-4409, ¶ 17,

quoting *VIL Laser Sys., L.L.C. v. Shiloh Industries, Inc.*, 2008-Ohio-3920, ¶ 8. An “appellate court is without jurisdiction to entertain the appeal until all of the intertwined claims are final.” *Pesta v. Parma*, 2009-Ohio-3060, ¶ 13 (8th Dist.), citing *Ollick v. Rice*, 16 Ohio App.3d 448 (8th Dist. 1984).

{¶ 35} Following the close of briefing in this matter, this court directed the parties to file supplemental briefing regarding whether a final, appealable order had been presented:

The complaint lists University Hospitals, University Hospitals Health System, Inc., and University Hospitals Medical Group, Inc. as defendants. However, the February 4, 2025 dismissal lists only University Hospitals Health System, Inc., and University Hospitals Medical Group, Inc. as being dismissed. It appears that there is no resolution as to defendant University Hospitals. The failure to resolve all claims against all parties presents a jurisdictional impediment.

{¶ 36} Both parties argued that “University Hospitals” was a trade name and not an authentic party. Mattox asserted that she voluntarily dismissed her claims against University Hospitals Health System, Inc., and there was no need to dismiss the fictitious party.

{¶ 37} Appellees further contend that while “University Hospitals” was named in the caption of Mattox’s complaint, the body of the complaint noted that “University Hospitals” was a trade name for University Hospitals Health System. (Complaint, ¶ 4 and 27.) Appellees maintain that no resolution was necessary with regard to “University Hospitals” and there was no jurisdictional impediment.

{¶ 38} We note that “University Hospitals” is named as a defendant in the caption of Mattox’s complaint. However, in the body of the complaint, it refers to

defendant “University Hospitals Health System, Inc. d/b/a University Hospitals” and in the section of the complaint identifying the parties, it states, “Defendant University Hospitals Health System, Inc. (doing business as University Hospitals)” (Complaint, ¶ 4 and 27.) Ohio courts have held that the body of the complaint, not the caption, determines the parties to the action. *See Davis v. Johnson*, 2021-Ohio-85, ¶ 25 (6th Dist.); *Engelhart v. Bluett*, 2016-Ohio-7237, ¶ 12 (1st Dist.); *see also Briggs v. Wilcox*, 2013-Ohio-1541, ¶ 37 (8th Dist.).

{¶ 39} It does not appear that University Hospitals is a separate entity from University Hospitals Health System, Inc., which was voluntarily dismissed from this case prior to trial. Accordingly, no claims remain pending against University Hospitals.

{¶ 40} On a final procedural note, Mattox’s complaint named John Does #1-#10 as defendants. The record reveals that Mattox never amended the complaint under Civ.R. 15(D) to identify the John Doe defendants. She also did not serve the John Doe defendants with a summons and copy of the complaint within one year of the filing of the complaint. Consequently, the action against them was never commenced within the meaning of Civ.R. 3(A). *See, e.g., Jackson-Summers v. Brooks*, 2006-Ohio-1357, ¶ 16 (8th Dist.).

{¶ 41} Thus, the judgment of the trial court adjudicated all pending claims, and the order from which Mattox appealed is final and appealable pursuant to R.C. 2505.02.

{¶ 42} We now proceed to the merits of Mattox’s appeal.

B. Exclusion of Medical-Battery Claim

{¶ 43} In her first assignment of error, Mattox argues that the trial court erred by using a motion in limine to exclude the presentation of her medical-battery claim when it had been pled in the complaint and was supported by evidence.

{¶ 44} In granting appellees' motion in limine, the court determined that the complaint "unquestionably" alleged a claim of lack of informed consent. The court further found that medical battery had different elements than an informed-consent claim and that Mattox did not plead a claim for medical battery or "lack of any consent." The trial court held that the jury would only be instructed on the two causes of action specifically alleged in the complaint.

{¶ 45} Mattox argues that the trial court erred because a motion in limine was not the proper vehicle to dismiss one of her claims. She contends that her claim could only be dismissed via a motion for summary judgment.

{¶ 46} "A motion in limine is essentially a request to limit or exclude evidence or testimony at trial." *Jones v. Cleveland Clinic Found.*, 2021-Ohio-1095, ¶ 26 (8th Dist.), quoting *State v. Winston*, 71 Ohio App.3d 154, 158 (2d Dist. 1991); *Thakur v. Health Care & Retirement Corp. of Am.*, 2009-Ohio-2765 (6th Dist.). "Generally, motions in limine are not used to distill the legal issues remaining for trial." *Griffis v. Klein*, 2008-Ohio-2239, ¶ 23 (2d Dist.). This court has held that it is improper to use a motion in limine "to eliminate the substance of [a plaintiff's] case-in-chief." *Bruckner v. Taddie*, 1994 Ohio App. LEXIS 795, *8 (8th Dist. Mar.

3, 1994), citing *Lin v. Gatehouse Constr. Co.*, 84 Ohio App.3d 96 (8th Dist. 1992).

As further stated by this court:

[A] motion in limine cannot be used as a substitute for a dispositive motion. The issue in any motion in limine is the admissibility of evidence, i.e., the relevance of such evidence to the claims being pursued by the litigants. The issue is not whether the evidence is legally sufficient to support a claim or defense. The issue of the sufficiency of the evidence to a claim or defense prior to trial can be challenged by a dispositive motion such as a motion to dismiss, see Civ. R. 12(B)(6) or Civ. R. 12(C), or a motion for summary judgment.

Vitanza v. First Natl. Supermarkets, 1993 Ohio App. LEXIS 3213, *21 (8th Dist. June 24, 1993).

{¶ 47} Here, the trial court reviewed the complaint and determined that Mattox had only pled claims for negligence and lack of informed consent. Appellees maintain that they were unaware that Mattox was alleging a medical-battery claim until her final pretrial statement noted three claims: negligence, lack of informed consent, and medical battery.

{¶ 48} Appellees filed motions for leave to file motions for summary judgment instanter on the first two claims and also regarding the battery claim. Appellees stated in their motion for leave pertaining to the battery claim that, shortly after Mattox's final pretrial statement was filed, the parties discussed the battery claim with the court. At that time, the court told the parties to brief the issue.

{¶ 49} The court summarily denied leave to file the motions for summary judgment; the court only addressed appellees' motion in limine regarding the battery claim and concluded that only the tort of lack of informed consent was pled

and that Mattox had not alleged a claim for medical battery. Accordingly, the trial court did not specifically *dismiss* a claim; rather, the court determined that Mattox had not actually pled a claim for medical battery.

{¶ 50} Mattox relies on *Cunningham v. Hildebrand*, 1999 Ohio App. LEXIS 2898 (8th Dist. June 24, 1999), but that case is distinguishable from the matter at hand. In *Cunningham*, this court held that a motion in limine could not be used to dismiss claims and could only address evidentiary matters. While the trial court and the parties treated certain claims as having been dismissed, the *Cunningham* Court determined that the granting of the motion in limine did not, in fact, dismiss those claims.⁴

{¶ 51} Likewise, in *Lin*, 84 Ohio App.3d 96, the complaint had alleged causes of action for breach of contract, negligence, and negligence per se. On the day of trial, the defendants filed a motion in limine, seeking to exclude “all matters not related to the breach of contract counts” in the complaint. *Id.* at 104. The court granted the motion, believing that the breach-of-contract claim was the only cause of action remaining. The *Lin* Court disagreed, finding that other claims were still pending and that granting the motion in limine had “effectively dismissed” claims that had been specifically set forth in the complaint. The court stated that a motion

⁴ The appeal in *Cunningham* was ultimately dismissed for lack of a final, appealable order because the trial court’s granting of the motion in limine “was a nullity and did not result in the dismissal of appellants’ claims for loss of consortium and emotional distress. Those claims were not resolved below and remain pending.” *Id.* at *3-4.

in limine could not be used to properly dismiss those causes of action. *Id.* at 104-105.

{¶ 52} Here, Mattox specifically set forth two counts in her complaint and labeled them “negligence” and “failure to obtain informed consent.” However, as argued by Mattox, there are several allegations set forth in the complaint that would potentially support a claim for medical battery, i.e., that the surgical procedure performed upon her utilizing vaginal removal rather than morcellation exceeded the scope of her consent. Civ.R. 8(A) requires “a short and plain statement of the claim showing that the party is entitled to relief.” “Although a complaint need not state with precision all elements that give rise to a legal basis for recovery, fair notice of the nature of the action must be provided.” *Sultaana v. Horseshoe Casino*, 2015-Ohio-4083, ¶ 11 (8th Dist.), quoting *McWreath v. Cortland Bank*, 2012-Ohio-3013, ¶ 40 (11th Dist.), citing *Bridge v. Park Natl. Bank*, 2003-Ohio-6932, ¶ 5 (10th Dist.). Because Ohio is a notice-pleading state, Ohio law ordinarily does not require a plaintiff “to plead operative facts with particularity.” *Cincinnati v. Beretta U.S.A. Corp.*, 2002-Ohio-2480, ¶ 29.

{¶ 53} Nevertheless, we need not determine whether Mattox did, in fact, allege a medical-battery claim or whether the trial court effectively dismissed the purported claim. Even if the court erred by granting the motion in limine, any error was harmless. Mattox does not argue that she was precluded from presenting any evidence in support of a battery claim. On the contrary, she argues in her second

assignment of error that enough evidence supporting a battery claim had been presented to warrant amendment of the pleadings to conform to the evidence.

{¶ 54} Even with all of the evidence before it, the jury ultimately found that Mattox had not proven her claim of lack of informed consent; consequently, the jury could not have determined that Mattox had proven a lack of *any* consent such that she had been subject to a medical battery.

{¶ 55} Mattox's first assignment of error is overruled.

C. Denial of Motion to Amend Pleadings under Civ.R. 15(B)

{¶ 56} In her second assignment of error, Mattox argues that the trial court abused its discretion in denying her Civ.R. 15(B) motion to amend the pleadings. She contends that a battery claim was tried by implied consent of appellees.

{¶ 57} At the close of evidence, Mattox moved to amend the pleadings under Civ.R. 15(B) to allow her battery claim to be asserted. (Tr. 1329.)

{¶ 58} Ohio Civ.R. 15(B) governs amended pleadings and reads, in pertinent part:

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment. Failure to amend as provided herein does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his

action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

{¶ 59} We review a trial court’s decision regarding amendments of pleadings under Civ.R. 15(B) for an abuse of discretion. *Caruso v. Leneghan*, 2014-Ohio-1824, ¶ 103 (8th Dist.), citing *Aztec Internatl. Foods, Inc. v. Duenas*, 2013-Ohio-450, ¶ 25 (12th Dist.). An abuse of discretion occurs when a court exercises “its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.” *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶ 60} “Although Civ. R. [sic] 15 allows for liberal amendment of the pleadings toward that end, the rule will only apply when, as stated therein, the amendment would ‘conform to the evidence’ and when the issue is tried by either the ‘express or implied consent of the parties.’” *State ex rel. Evans v. Bainbridge Twp. Trustees*, 5 Ohio St.3d 41, 44 (1983). “A trial court has discretion to grant or deny a motion to amend the pleadings under Civ.R. 15(B).” *Simpson v. Sarat Kuchipudi*, 2006-Ohio-5163, ¶ 21 (3d Dist.), citing *Spisak v. McDole*, 15 Ohio St.3d 62, 63 (1984).

{¶ 61} Mattox argued that appellees implied their consent to try the issue of medical battery by not objecting to testimony relating to such a claim. “Under Civ.R 15(B), implied consent is not established merely because evidence bearing directly on an unpleaded issue was introduced without objection; *it must appear that the parties understood the evidence was aimed at the unpleaded issues.*”

(Emphasis added.) *Textiles, Inc. v. Design Wise, Inc.*, 2010-Ohio-1524, ¶ 18 (12th Dist.).

To determine whether the parties impliedly consented to litigate an issue, courts consider various factors, including “whether they recognized that an unpleaded issue entered the case; whether the opposing party had a fair opportunity to address the tendered issue or would offer additional evidence if the case were to be retried on a different theory; and whether the witnesses were subjected to extensive cross-examination on the issue.” [*Evans*] at paragraph one of the syllabus.

Bernard v. Christopherson, 2024-Ohio-6016, ¶ 21 (8th Dist.).

{¶ 62} Here, the record reflects that neither party specifically acknowledged that an unpled issue had entered the case. On the contrary, appellees had objected to any attempt by Mattox to argue a battery claim throughout the case.

{¶ 63} Mattox points to several instances during the trial where appellees failed to object to Mattox’s testimony that supported a battery claim. In particular, Mattox cites her testimony (1) regarding her consent “to an abdominal, robotic hysterectomy with the specific condition that her uterus, fallopian tubes, cervix, and fibroids all be removed through an abdominal incision via morcellation,” (2) that she had been assured that nothing was “coming out of [her] vagina,” and (3) that she would not have agreed to the surgery had she been told that vaginal removal would occur.

{¶ 64} Mattox argues that appellees did not object to this testimony, cross-examined Mattox on it, and questioned Dubchuk and their own expert on the

specifics of the consent and surgery. Mattox contends that, consequently, there was “a clear understanding that the scope of consent was a key issue being litigated.”

{¶ 65} The tort of lack of informed consent 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.

Jones v. MetroHealth Med. Ctr., 2017-Ohio-7329, ¶ 91 (8th Dist.).

{¶ 66} To recover on a claim for battery, a plaintiff must prove an “intentional, unconsented-to touching.” *Anderson v. St. Francis-St. George Hosp., Inc.*, 77 Ohio St.3d 82, 84 (1996); *Schwaller v. Maguire*, 2003-Ohio-6917, ¶ 14 (1st Dist.); *Lipp v. Kwyer*, 2003-Ohio-3988, ¶ 25 (6th Dist.). Every competent person has a right to decide what is done to his or her body. *Lipp* at ¶ 24, citing *Siegel v. Mt. Sinai Hosp.*, 62 Ohio App.2d 12, 21 (8th Dist. 1978). In a medical setting, if a physician treats a patient without authorization or consent, the physician has committed a technical battery — even if the procedure is “beneficial or harmless.” *Lacey v. Laird*, 166 Ohio St. 12 (1956), paragraph one of the syllabus; *Maglosky v. Kest*, 2005-Ohio-5133, ¶ 24 (8th Dist.); see also *Dean v. Akron Gen. Med. Ctr.*, 1999

Ohio App. LEXIS 6169, *13 (9th Dist. Dec. 22, 1999) (“Surgery performed without the proper consent constitutes technical battery.”).

{¶ 67} “Unconsented touching can arise either because no consent was given or because the consent given was limited and the procedure performed went beyond the boundaries of the consent that was given.” *Dean* at *id.* Where, however, a patient gives express, informed consent prior to medical treatment, there is no battery. *Marcum v. Holzer Clinic, Inc.*, 2004-Ohio-4124, ¶ 37 (4th Dist.), citing *Watkins v. Cleveland Clinic Found.*, 130 Ohio App.3d 262 (8th Dist. 1988). “When a defendant offers proof that a plaintiff has consented to a medical treatment and the plaintiff fails to present evidence that the procedure was performed without consent or that the treatment exceeded his or her consent, there is a failure of proof on an essential element of battery.” *Marcum* at *id.*, citing *Lipp*.

{¶ 68} Given the above, there is overlap in the evidence that would support a claim for battery and the evidence that would support a claim for lack of informed consent. The evidence that Mattox points to as relating to her unpled claim for battery was offered to support her pled claim for lack of informed consent. In order to defend against this claim, appellees cross-examined her and presented their own evidence. As such, it is not surprising that appellees did not object to evidence related to the scope of Mattox’s consent — it directly related to their defense against Mattox’s claim for lack of informed consent.

{¶ 69} Accordingly, we cannot find that appellees understood the evidence cited by Mattox was aimed at the unpled issue of medical battery. Therefore,

appellees did not impliedly consent to the trial of the unpled claim. The trial court properly denied Mattox's motion to amend the pleadings under Civ.R. 15(B), and Mattox's second assignment of error is overruled.

D. Application of R.C. 2317.54

{¶ 70} In her third assignment of error, Mattox argues that the trial court erred in applying R.C. 2317.54 to bar Mattox's claims because she had signed a written consent form.

{¶ 71} Mattox contends that the trial court erred in its "ruling" that R.C. 2317.54 barred her claim; however, Mattox fails to cite where in the record the court made any "ruling" regarding this statute. For each assignment of error presented for review, an appellant is required to identify the specific parts of the record where the alleged error occurred. *See* App.R. 16(A)(7) (requiring that appellant's brief include "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies"). "This rule is designed 'to aid the reviewing court in determining whether any reversible error occurred in the lower court by having the complaining party specify the exact location(s) where such a determination can be made.'" *Mayfair Village Condominium Owners Assn. v. Grynko*, 2013-Ohio-2100, ¶ 6 (8th Dist.), quoting *Hildreth Mfg. v. Semco, Inc.*, 2003-Ohio-741, ¶ 32 (3d Dist.). An appellate court may disregard an assignment of error when the appellant fails to identify the relevant portions of the record upon which an assignment of error is

based. App.R. 12(A)(2); *see also Mayfair Village Condominium Owners Assn.* at ¶ 6 (An appellate court is “not obliged to scour the record in search of evidence to support an appellant’s assignment of error.”), citing *Nob Hill E. Condominium Assn. v. Grundstein*, 2011-Ohio-2552, ¶ 11 (8th Dist.).

{¶ 72} It appears that R.C. 2317.54 was discussed multiple times during the pendency of this case and specifically during the trial. The statute was relied upon by appellees in pretrial motions, appellees moved for a directed verdict based upon the statute, and the jury instructions and interrogatories were crafted in accordance with the prongs set forth in the statute. Mattox’s failure to identify any particular claimed erroneous ruling bars our consideration of this assignment of error. As explained by the Third District:

On appeal, an appellant has the responsibility to prove that the trial court committed an error. *Shumate v. City of Gahanna*, 10th Dist. Franklin No. 02AP-881, 2003-Ohio-1329, ¶ 6. The appellant cannot prove the trial court erred by “merely setting forth conclusory statements” that claim the trial court erred. *In re B.P.*, 9th Dist. Lorain No. 14CA010531, 2015-Ohio-48, ¶ 10, citing App.R. 16(A)(7). Instead, the appellant needs to cite to legal authorities that demonstrate that the trial court committed an error. App.R. 16(A)(7).

Adams v. June, 2021-Ohio-168, ¶ 8 (3d Dist.).

{¶ 73} Beyond discussion of the application of the statute, Mattox does not cite any law or authority that would guide our review. Our determination of whether a court erred in ruling on a motion in limine, a motion for summary judgment, a motion for directed verdict, or the issuance of jury instructions or interrogatories varies greatly. We cannot simply determine that the trial court erred in generally

applying the statute to the case. Thus, consideration of this assignment of error would require us to engage in speculation as to where in the record Mattox is claiming error, which we will not do.

{¶ 74} Mattox's third assignment of error is overruled.

E. Jury Instructions

{¶ 75} In her fourth assignment of error, Mattox argues that the jury instructions erroneously confined the jury to a claim of informed consent and prevented consideration of her battery claim.

{¶ 76} Because we have determined that a battery claim was not tried in this matter, there was no basis to instruct the jury on such a claim. The fourth assignment of error lacks merit and is overruled.

F. Jury Interrogatories

{¶ 77} In her fifth assignment of error, Mattox argues that the trial court violated Civ.R. 49(B) by revising the jury interrogatories after closing arguments.

{¶ 78} After the court instructed the jury, counsel for appellees stated that they had "noticed a couple things about the interrogatories." (Tr. 1451.) The court said they would discuss "that" in a minute, and then court was adjourned. (Tr. 1452.) However, the finalization of the interrogatories occurred off the record; the transcript contains no further discussion about the interrogatories and resumes with the announcement of the verdict.

{¶ 79} During Mattox's closing argument, her counsel discussed the interrogatories with the jury. He read the third interrogatory to the jury from the

interrogatories that had been emailed to him by the court: “Did Dr. Dubchuk provide adequate informed consent?”

{¶ 80} Mattox argues that after closing arguments, the court modified the third interrogatory to state as follows: “Regardless of your answers to Interrogatory Nos. 1 and 2, did the plaintiff prove by the greater weight of the evidence that Dr. Dubchuk provided inadequate informed consent to plaintiff Shannon Mattox regarding the robotic assisted hysterectomy performed on April 10, 2023?” Mattox argues that this revised wording improperly placed the burden of proof on herself and eliminated the possibility that the jury could consider that the vaginal removal was never consented to at all — in other words, a medical-battery claim.

{¶ 81} We note that Mattox failed to object to the interrogatories. “The failure to object to an interrogatory constitutes a waiver of the alleged error on appeal.” *Black v. Hicks*, 2020-Ohio-3976, ¶ 32 (8th Dist.), citing *Druzin v. S.A. Comunale Co.*, 2015-Ohio-4699, ¶ 17 (8th Dist.), citing *Boewe v. Ford Motor Co.*, 94 Ohio App.3d 270, 279 (8th Dist. 1992).

{¶ 82} Mattox argues that there can be no waiver because of the mandatory nature of Civ.R. 49(B). This rule provides that “[t]he court *shall* inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the interrogatories shall be submitted to the jury in the form that the court approves.” (Emphasis added.)

{¶ 83} Mattox asserts that she could not have objected to the change because she was never given the opportunity to do so. The record belies this argument. In

rendering its verdict, the jury initially only answered the first and second interrogatories, finding that (1) Mattox had signed a written consent form that set forth the procedure, the physician performing the surgery and the known risks, and acknowledged that “the disclosure” had been made and all questions had been answered in a satisfactory manner and that (2) Mattox had not proven by the greater weight of the evidence that, with regard to the signed consent form, Dubchuk had not acted in good faith or that Mattox’s signature had been obtained by fraudulent misrepresentation.

{¶ 84} Upon the announcement of the verdict and the answers to the two interrogatories, Mattox’s counsel asserted that the jury was required to answer the third interrogatory, regarding the adequacy of the written consent form. The following exchange occurred:

THE COURT: So having examined the verdict or the jury’s forms, [Mattox’s counsel], anything else we need to do before saying thank you and so long to the jury?

MATTOX’S COUNSEL: Yeah, Your Honor. It was my recollection interrogatory number three would have been answered regardless of the answer to number one and two.

THE COURT: Let me check. That was probably my mistake then. Because I think one and two show compliance with the statute. In other words — well, yes, if there’s compliance with the statute, it is deemed — and I am paraphrasing the statute — deemed valid.

MATTOX’S COUNSEL: So the statute has — it also says it has no effect upon the common law rights, which is why interrogatory number three would be applicable in this case, which is why we wanted the answer.

THE COURT: Well, the statute says — and, again, I am paraphrasing because I don’t have it right in front of me — a compliant written

consent is deemed valid and effective. I believe those are the two words. If I am wrong, somebody will correct me.

If it's not valid and effective as an informed consent, then what is it valid for?

MATTOX'S COUNSEL: So they still need to answer the question as to the common law right and informed consent, which is what interrogatory number three has.

(Tr. 1455-1456.)

{¶ 85} The court asked if appellees had a position on this issue. Defense counsel acknowledged that they had not “seen the final version” of the interrogatories but that the third interrogatory would be answered the same way because Mattox’s verbal statements were inadmissible. (Tr. 1457.) The court stated that it would give counsel “a chance to scrutinize” the interrogatories. (Tr. 1456.)

{¶ 86} The court then instructed the jury to answer the third interrogatory. While deliberating, the jury sent a question to the court, stating that the interrogatory did not make sense and asking if the word “adequate” was actually supposed to be “inadequate.”

{¶ 87} The court read the question into the record and determined that there had been a typographical error in the interrogatory. The court read the entire third interrogatory to counsel and stated that the word “adequate” should have been “inadequate.” The court then asked counsel if they agreed with sending a corrected interrogatory back to the jury for them to answer. Both counsel stated that they agreed with that solution. At no time did Mattox’s counsel object to, or even question, the phrasing of the third interrogatory.

{¶ 88} The corrected interrogatory was provided to the jury; they subsequently sent another note stating that the form was still not correct. The court explained how the interrogatory was to be read, and the jury was instructed again to consider the third interrogatory.

{¶ 89} The jury returned, answering the third interrogatory in the negative. The court asked counsel if they wished to scrutinize the interrogatories and verdict forms; both counsel declined.

{¶ 90} Mattox appears to claim plain error by stating in her brief, “The court’s violation of [Civ.R. 49(B)] is plain, prejudicial, and requires reversal.” However, “[w]e recognize that Ohio courts have consistently applied the waiver doctrine to claims of alleged error with jury interrogatories, without applying the plain-error doctrine, ‘when the appellant failed to object prior to the jury being discharged.’” *McCoy v. Avon Place Skilled Nursing & Rehab. Ctr.*, 2026-Ohio-36, ¶ 54 (8th Dist.), quoting *Druzin*, 2015-Ohio-4699, at ¶ 19 (8th Dist.).

{¶ 91} The *Druzin* Court addressed a similar situation where the appellant did not object to a jury interrogatory and stated:

Generally, the failure to object to an interrogatory constitutes waiver of any error on appeal. *Boewe v. Ford Motor Co.*, 94 Ohio App.3d 270, 279, 640 N.E.2d 850 (8th Dist. 1992). A reviewing court will not consider any error which a party failed to bring to the trial court’s attention at a time when that error could have been avoided or corrected by the court. *LeFort v. Century 21-Maitland Realty Co.*, 32 Ohio St.3d 121, 123, 512 N.E.2d 640 (1987). As stated by the Ohio Supreme Court, “the fundamental rule is that an appellate court will not consider any error which could have been brought to the trial court’s attention, and hence avoided or otherwise corrected.” *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 210, 436 N.E.2d 1001 (1982).

Druzin at ¶ 17.

{¶ 92} Here, the record does not clearly reflect how the interrogatories were finalized or when the revision of the third interrogatory occurred. Nevertheless, Mattox did not object to the third interrogatory, even while the very language used was questioned by the jury and discussed among the court and counsel. Mattox has therefore waived any error on appeal regarding the third interrogatory.

{¶ 93} The remainder of Mattox’s arguments regarding the jury interrogatories relate to her proposed battery claim, which we have already determined was not tried.

{¶ 94} Mattox’s fifth assignment of error is overruled.

G. Cumulative Error

{¶ 95} In her sixth assignment of error, Mattox argues that the cumulative effect of multiple errors deprived her of a fair trial.

{¶ 96} Under the cumulative-error doctrine, a trial court’s judgment may be reversed if the cumulative effect of multiple errors prevented a fair trial even though each of the individual errors, standing alone, would not constitute grounds for reversal. *State v. Garner*, 74 Ohio St.3d 49, 64 (1995). *See also Edge v. Fairview Hosp.*, 2011-Ohio-2148, ¶ 46 (8th Dist.) (noting that this court has found that the extension of the cumulative-error doctrine to civil cases is warranted where the court is confronted with several errors, which either are harmless individually or have marginally prejudicial effects, but combine to require a new trial). “The

cumulative-error doctrine does not apply in cases where there are not multiple errors.” *Marrs v. Mickel*, 2023-Ohio-4528, ¶ 24 (8th Dist.).

{¶ 97} We have not found any error, let alone multiple errors, in the proceedings of this case. Therefore, the cumulative-error doctrine does not apply, and Mattox’s sixth assignment of error is overruled. The judgment of the trial court is affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

LISA B. FORBES, P.J., and
MARY J. BOYLE, J., CONCUR