

Amicus's Supplemental brief lacks merit for three reasons.

First, the court of appeals' decision does not "preserve[] an apparently meritorious cause of action," as Amicus asserts. [Brief, p. 3.] If Plaintiff had had a meritorious cause of action, he would have been able to find an expert who agreed with his allegation that Dr. Art fell below the standard of care. The fact that no expert would support his case indicates he did not have a meritorious cause of action.

Second, no party has suggested that this case involves a battery. Indeed, Plaintiff pled only a lack of informed consent case. [See R. 1 (complaint alleging three causes of action: "Lack of Informed Consent," "Negligence," and "Negligence Per Se").]¹ This Court will not consider arguments raised only by an amicus. *Ormsbee v. Allstate Ins. Co.*, 177 Ariz. 146, 147 (1993) ("An amicus cannot raise issues which have not been raised by the parties.").

Third, Amicus's argument is wrong substantively anyway. Whatever might be said about the law in Pennsylvania (which Amicus cites, Brief, pp.

¹ Nor did Plaintiff allege that Dr. Art "administered a medication" without Plaintiff's consent, as Amicus asserts. [Brief, pp. 4-5, 6.]

5-6), in Arizona “lack of consent” is a battery claim. “Lack of informed consent” is a negligence claim that requires expert testimony. *Duncan v. Scottsdale Med. Imaging, Ltd.*, 205 Ariz. 306, 310 (2003):

The inconsistent use of terminology has blurred the distinction between “lack of informed consent,” which should be pled in negligence, and “lack of consent,” which should be pled in battery. To clear up any confusion, we adopt the reasoning in *Cobbs v. Grant* and hold that claims involving lack of consent, i.e., the doctor’s failure to operate within the limits of the patient’s consent, may be brought as battery actions. In contrast, true “informed consent” claims, i.e., those involving the doctor’s obligation to provide information, must be brought as negligence actions. As we noted in *Hales*, “we leave the precise parameters of the required disclosure for any particular [informed consent] case to be established by expert testimony in accordance with the applicable standard of care.”

CONCLUSION

Defendants again urge the Court to grant review, vacate the court of appeals' decision, and order the trial court to reinstate the dismissal of Plaintiffs' complaint.

RESPECTFULLY SUBMITTED this 21st day of February, 2024.

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