

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

**NOTICE: Motions for reconsideration must be
received no later than 4:30 pm on the 10th day after
the decision was issued to be deemed timely filed.
<https://www.gaappeals.gov/rules>**

October 14, 2026

In the Court of Appeals of Georgia

A26A1352. MERAT et al. v. WELLSTAR NORTH FULTON
HOSPITAL et al.

MARKLE, Judge.

Johanne Merat, individually and on behalf of her minor son who suffered injuries during delivery, filed this medical malpractice suit against Wellstar North Fulton Hospital, Niles Women's Healthcare,¹ Dr. Urania Davis, Lynn Earman, Yoo Jeong Yang, and Lashanda Adams. After the trial court dismissed the claims against all defendants, Merat moved for reconsideration and filed a motion to extend the time in which to file her notice of appeal. The trial court denied both motions, and Merat filed a notice of appeal thereafter. For the reasons that follow, we dismiss the appeal.

¹ Niles Women's Healthcare was also known as Isis Obstetrics and Gynecology. Because Merat identified the defendant as Niles, we do so here.

We are obligated to consider our jurisdiction in any cases before us. See *Patterson v. State*, 321 Ga. 487, 487 (915 SE2d 555) (2025); *Roberson v. State*, 378 Ga. App. 882, 883(2) (927 SE2d 586) (2026). See also *Duke v. State*, 306 Ga. 171, 181(3)(b) (829 SE2d 348) (2019) (“Questions pertaining to an appellate court’s jurisdiction cannot be sidestepped or pretermitted, as they go to the threshold question of whether the appellate court has the authority to decide the merits of the case.”). A notice of appeal must be filed within 30 days of the order being appealed, and if the notice is untimely, we lack jurisdiction to consider the merits of the case. *First Merit Credit Servs. v. Fairway Aviation*, 359 Ga. App. 829, 830(1) (860 SE2d 126) (2021); OCGA § 5-6-38(a).

As alleged in the complaint, on June 28, 2023, Merat’s son suffered complications during delivery that left him permanently injured. On June 25, 2025, Merat filed her complaint against the defendants seeking to take advantage of the grace period for filing an expert affidavit required under OCGA § 9-11-9.1(b).² Attached to the complaint was an unsigned affidavit from counsel confirming he had been retained recently and that the plaintiff was seeking an additional 45 days in which

² The parties do not dispute that the two-year statute of limitations was about to expire. See OCGA § 9-3-71(a).

to file the affidavit. Later that same day, counsel filed another complaint, this one with counsel's signed affidavit attached, but no signed verification by the plaintiff.³ Five days later, counsel submitted an amended complaint and a second amended complaint with signed affidavits and signed verifications.⁴

All defendants filed special appearance answers and motions to dismiss.⁵ Merat later agreed to voluntarily dismiss the claims against Yang and Adams without prejudice.

Merat's initial attempts to serve Dr. Davis were unsuccessful. The remaining defendants submitted affidavits confirming they had not been served. Dr. Davis was ultimately personally served on November 26, 2025.

³ It is unclear whether this complaint was filed, as the copy in the record does not contain any file stamp.

⁴ Merat did not submit the expert affidavit until August 7, and she later sought an extension of time in which to file an amended affidavit. The trial court denied the extension.

⁵ The trial court stayed discovery pending the resolution of these motions.

The morning of a scheduled hearing, Merat filed a voluntarily dismissal of all defendants without prejudice. Counsel then failed to appear at the hearing, but later sent a letter explaining that he was ill.

On December 3, 2025, the trial court ruled on the pending motions based on the briefing and the record, dismissing Adams and Yang without prejudice; denying the voluntary dismissal of all defendants because the motion was filed more than 60 days after the defendants filed their answers; dismissing the claims against Wellstar; and dismissing the claims against Niles, Davis, and Earman with prejudice for failure to timely serve them.

Merat filed a timely motion for reconsideration, followed by an amended motion, with respect to the dismissal of the claims against Niles and Davis. Merat also confirmed that she did not oppose the dismissal of Wellstar, Earman, Yang, or Adams.

On January 2, 2026, realizing that the period in which to file a notice of appeal was about to expire and the trial court had yet to rule on the motion for reconsideration, Merat filed a “emergency application to extend time to file notice of appeal.” See OCGA § 5-6-39. Merat requested a 30-day extension and, in the body of that motion, she explained: “In the event the court is not inclined to grant the

extension of time to file a Notice of Appeal, out of an abundance of caution and in the alternative, Plaintiffs ask that the Court accept the attached Notice of Appeal for filing effective January 2, 2026. *See Attached Exhibit 3, Proposed Notice of Appeal.*” The first exhibit to the motion contains an “e-filed” stamp, but the rest of the exhibits — including the “proposed notice of appeal,” which appears as Exhibit 3 — do not show any file stamps. On January 13, after the expiration of the period in which to file a notice of appeal, the trial court denied both the request for an extension of time in which to file the notice of appeal and the motion for reconsideration.

On January 16, 2026, Merat filed an “amended” notice of appeal. That same day, the trial court’s clerk’s office sent Merat a letter to pay costs to prepare the file for appeal, identifying the date of the notice of appeal as January 16. On February 13, Merat filed a second amended notice of appeal. On appeal, Merat contends that the trial court erred by (1) dismissing the complaint for failure to comply with the affidavit requirements; (2) finding service was not perfected; (3) dismissing the action with prejudice; and (4) denying the motion for reconsideration. The defendants have filed a joint motion to dismiss the appeal on the ground that the notice of appeal was untimely.

1. We begin with the defendants’ motion to dismiss the appeal. The defendants contend that the motion for reconsideration did not toll the time in which to file the notice of appeal, and submitting a proposed notice of appeal as an exhibit to another filing is insufficient to enable this Court to exercise jurisdiction over the appeal. We agree.

“The timely filing of a notice of appeal is an absolute requirement to confer jurisdiction on this Court.” *Price v. Dozier*, 348 Ga. App. 283, 283 (821 SE2d 566) (2018). A party seeking to appeal an adverse judgment must file their notice of appeal “within 30 days after entry of the appealable decision or judgment complained of[.]” OCGA § 5-6-38(a). The notice must be sufficient to apprise the trial court of the intent to appeal, and it acts as supersedeas to deprive the trial court of “the power to affect the judgment appealed.” *Patterson*, 321 Ga. at 488 (quotation marks omitted). Importantly, although some post-judgment motions may toll the time in which to file the notice of appeal, a motion for reconsideration does not. *Ferguson v. Freeman*, 282 Ga. 180, 181(1) (646 SE2d 65) (2007); *Harned v. Piedmont Healthcare Found.*, 356 Ga. App. 870, 872 (849 SE2d 726) (2020); OCGA § 5-6-38.

“The purpose of a notice of appeal (as its moniker suggests) is to provide opposing parties and the court with notice of one’s intent to appeal. That is why the notice afforded by a document determines the document’s sufficiency as a notice of appeal.” *Parrish v. United States*, 605 U.S. 376, 385(II)(B) (145 SCt 1664, 222 LE2d 37) (2025) (citation modified)); *Smith v. Barry*, 502 U.S. 244, 248(II) (112 SCt 678, 116 LE2d 678) (1992) (“While a notice of appeal must specifically indicate the litigant’s intent to seek appellate review, the purpose of this requirement is to ensure that the filing provides sufficient notice to other parties and the courts. Thus, the notice afforded by a document, not the litigant’s motivation in filing it, determines the document’s sufficiency as a notice of appeal.” (citation modified)).

We have not addressed whether a “proposed” notice of appeal attached to another motion satisfies the requirements for a notice of appeal. In *Patterson*, our Supreme Court addressed a related question. There, the appellant filed an untimely notice of appeal, as well as motions for reconsideration and for an extension of time to file the notice of appeal. *Patterson*, 321 Ga. at 487. The Court held that the trial court was divested of jurisdiction to rule on the motion for reconsideration because the appellant had filed a notice of appeal and, even though the notice was untimely,

it still acted as supersedeas. *Id.* at 488. Notably, the appellant in *Patterson* argued that the trial court retained jurisdiction because the notice of appeal was merely an exhibit to the motion for reconsideration. *Id.* at 488-89. The Supreme Court rejected that argument, explaining that the notice of appeal “was clearly labeled and filed as a notice of appeal, and the motion for reconsideration did not reference the notice of appeal as an exhibit.” *Id.* at 489.

In contrast, here, Merat filed the notice of appeal as an exhibit to a motion for an extension of time to file a notice of appeal. In the motion for an extension, Merat advised the trial court that the motion for reconsideration remained pending and that she was seeking an extension “to allow the Court to reconsider the Dismissal Order *prior* to filing a Notice of Appeal,” and that the notice of appeal was “in the alternative.” (emphasis added). But Merat’s attempt to “cover all the bases” by filing the proposed notice of appeal as an exhibit “in the alternative” failed to provide the necessary notice. *Parrish*, 605 U.S. at 385(II)(B); *Smith*, 502 U.S. at 248(II). The proposed notice of appeal was one of three exhibits submitted and did not alert the trial court or the parties to a pending appeal given that the clerk’s office waited until Merat filed a separate notice a few weeks later to advise her of the costs to appeal.

In contending that she filed a timely notice of appeal, Merat essentially argues that the proposed notice of appeal was a self-executing document that took effect when filed, and the request that the court accept it was “mere surplusage.”⁶ She cannot have it both ways. Either the notice of appeal was operative when it was attached as an exhibit to another motion, divesting the trial court of jurisdiction to rule on the motion for reconsideration, *or* she intended it to become “self-executing” as soon as the court denied her motion for an extension. As the document makes clear, Merat sought a ruling on her motion for reconsideration and, as the trial court did not issue a ruling on either the motion for reconsideration or the motion for an extension of time until after the deadline for filing a timely notice of appeal, any notice of appeal ripening at that point was untimely. See OCGA § 5-6-38(a). Compare *Patterson*, 321 Ga. at 488-89.

It is true that

[t]he motion for reconsideration presents something of a harsh reality. Sometimes a party is faced with a clearly erroneous decision by a capable trial judge who would surely correct the error if given the opportunity. A party facing that situation must make a difficult decision: either to take

⁶ “Approval by the court is not required as a condition to filing the notice.” OCGA § 5-6-37.

an appeal—with its considerable attendant costs and delay—or give up the right to appeal and hope that the trial judge corrects the earlier decision. ... Failure to recognize this dilemma can lead to disaster.

Christopher J. McFadden, Charles R. Shepard, Charles M. Cork, David A. Webster, Kelly J. Weathers, Ga. Appellate Practice § 11:1 & n.16 (2025). See also OCGA § 5-6-39(a)(1) (appellant may request one extension of time in which to file a notice of appeal). Merat chose to file a motion for reconsideration and await a ruling. The unfortunate result is that her notice of appeal is thus untimely. On the unique facts of this case, we conclude that the “proposed” notice of appeal attached as an exhibit to another filing was insufficient to satisfy the required timely filing of a notice of appeal. Compare *Patterson*, 321 Ga. at 489; *Cain v. State*, 275 Ga. 784, 785-86 (573 SE2d 46) (2002) (adopting federal court’s view that as long as motion for out of time appeal is the “functional equivalent” of a notice of appeal, it will be treated as such). And, because there was no timely filed notice of appeal, Merat’s amended notice of appeal, filed after the denial of her motions for reconsideration and for extension of time, did not relate back to the “proposed” notice of appeal. Cf. *Harned*, 356 Ga. App. at 872, n.3 (untimely amended notice of appeal did not relate back to timely notice of appeal that had been withdrawn).

We recognize that the Appellate Practice Act is to be liberally construed to enable courts to reach the merits of appeals, and “we look to substance over nomenclature.” *Cain*, 275 Ga. at 786. But the filing of a *timely* notice of appeal is essential to confer jurisdiction. *First Merit Credit Servs.*, 359 Ga. App. at 830(1); OCGA §§ 5-6-30; 5-6-48(b)(1). Even liberally construing the motion and looking at its substance, the motion for an extension of time was not the “functional equivalent” of a notice of appeal. *Cain*, 275 Ga. at 786. Because Merat failed to file a timely notice of appeal from the trial court’s December 5 order, her appeal must be dismissed. *First Merit Credit Servs.*, 359 Ga. App. at 830(1).

2. Having concluded that the notice of appeal was untimely to appeal the December 5 order, we turn to Merat’s claim that the trial court abused its discretion by denying the motion for reconsideration.

It is well settled that “the denial of a motion for reconsideration of a final judgment is not itself a judgment subject to direct appeal.” *Ferguson*, 282 Ga. at 181(1); *Nesmith v. Branch*, 378 Ga. App. 267, 268(1), n.4 (925 SE2d 349) (2026). See generally OCGA § 5-6-35.

Accordingly, we lack jurisdiction to consider this claim of error, and we must dismiss this appeal.

Appeal dismissed. Barnes, P. J., and Hodges, J., concur.