

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

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September 10, 2026

In the Court of Appeals of Georgia

A26A1367. FERGUSON et al v. KENNESTONE HOSPITAL,
INC.

HODGES, Judge.

This is the second appearance of this tort action brought by Maxine Ferguson, individually and as administrator of the estate of Barrington A. Ferguson, Sr., against Kennestone Hospital, Inc. (“Kennestone”). See *Ferguson v. Kennestone Hosp., Inc.*, 370 Ga. App. 831 (899 SE2d 357) (2024) (“*Ferguson I*”). Ferguson appeals from the trial court’s order dismissing her complaint with prejudice, denying her motion to withdraw admissions, granting Kennestone summary judgment, and denying her motion to substitute the administrator of the estate as the plaintiff. We cannot address any of Ferguson’s arguments, however, because she lacks standing to challenge the trial court’s order. Accordingly, this appeal must be dismissed.

The pleadings show that on November 29, 2017, Barrington Ferguson died while under Kennestone's care. On January 8, 2020, his wife, Maxine Ferguson, was appointed administrator of his estate, conditioned upon giving bond in the amount of \$50,000. On January 7, 2022, Ferguson filed her complaint for damages, alleging negligence, battery, promissory estoppel, and pain and suffering. The trial court then granted Kennestone's motion to dismiss the negligence, promissory estoppel, and pain and suffering claims, as well as Kennestone's motion for summary judgment as to the battery claim. In *Ferguson I*, this Court affirmed the trial court's dismissal of the claims, but reversed the grant of summary judgment as to the battery claim, finding an issue of material fact remained. 370 Ga. App. at 831, 836–37(4).

After our decision in *Ferguson I*, the probate court concluded that it had erroneously issued letters of administration to Ferguson, as she had not secured the required bond. In June 2024, the probate court ordered Ferguson to secure the required bond, which she failed to do, and her letters of administration were revoked in March 2025. Ferguson did not alert the trial court that the probate court had removed her as administrator until months later, filing her motion to stay the

proceedings in June 2025,¹ which the trial court denied. A new administrator, Christen A. Ferguson Okete, was appointed in September 2025. There is no indication from the record that Okete took any action in this matter as the proper administrator or sought to intervene in the trial court at any point. Nor has she sought to participate in this appeal in this Court.

In December 2025, the trial court issued an omnibus order denying Ferguson’s motion for reconsideration of its order denying the motion to stay, dismissing her complaint with prejudice, denying her motion to substitute Okete as plaintiff, denying her motion to withdraw admissions, and granting Kennestone’s motion for summary judgment. The trial court found that Ferguson’s appointment as administrator was conditioned upon securing her bond and that she failed to do so. As a result, the trial court concluded that Ferguson “was never qualified or obtained the authority as personal representative of the [e]state. ... Thus, [she] lacked the authority to file the [c]omplaint[.]” The trial court dismissed the complaint with prejudice, concluding

¹ Kennestone alleges that this filing was also its first notice that Ferguson had been removed as administrator. Ferguson did not inform this Court that she had not paid her bond during the pendency of *Ferguson I*.

that the statute of limitation had run and the appointment of Okete as administrator would not revive the cause of action.

1. Ferguson appeals this order, enumerating as error all of the trial court's conclusions. At the crux of Ferguson's appeal is the question of whether a survival action, as here, is void, or merely voidable, when it is filed by an individual without the legal authority to do so. If it is only voidable, Ferguson contends that Okete could have revived the action and it was error not to substitute Okete as a party to allow her to do so. We decline to address this question because Ferguson does not have standing to challenge the trial court's order on appeal.

"It is well established that this Court has a solemn duty to inquire into our jurisdiction to review the errors enumerated on appeal, and it is a duty we do not take lightly." *Pathfinder Payment Solutions, Inc. v. Global Payments Direct, Inc.*, 344 Ga. App. 490 (810 SE2d 653) (2018) (punctuation omitted). While not raised by the parties, we must consider whether Ferguson has standing to appeal the trial court's order. See *Sherman v. Dev. Auth. of Fulton County*, 324 Ga. App. 23 (749 SE2d 29) (2013) (standing considered sua sponte on appeal). "The constitutional and procedural concept of 'standing' falls under the broad rubric of 'jurisdiction' in the

general sense, and a plaintiff with standing is a prerequisite for the existence of subject matter jurisdiction.” Id. (punctuation omitted); *In re Estate of Wheeler*, 349 Ga. App. 716, 717(1) (824 SE2d 715) (2019) (“Standing, of course, is a prerequisite to the existence of subject-matter jurisdiction.”).

Upon the husband’s death, his claim for battery vested in the administrator of his estate, not in any heirs or next of kin. *Walden v. John D. Archbold Mem. Hosp., Inc.*, 197 Ga. App. 275, 277(2) (398 SE2d 271) (1990), disapproved of on other grounds by *First Christ Holiness Church, Inc. v. Owens Temple First Christ Holiness Church, Inc.*, 282 Ga. 883, 886-87 (655 SE2d 605) (2008). See also OCGA § 9-2-41 (“No action for a tort shall abate by the death of either party,” and where the deceased is a plaintiff the claim “shall survive to the personal representative of the deceased plaintiff.”). And, of course, Georgia law is clear that “[a] right of action for personal torts ... may not be assigned.” OCGA § 44-12-24; see *Peoples v. Consolidated Freightways, Inc.*, 226 Ga. App. 265, 266(1) (486 SE2d 604) (1997) (“Under Georgia law, a right to bring or maintain a personal injury action cannot be assigned, because at common law such rights are not assignable.”). As such, only the administrator of the husband’s estate had standing to prosecute this case.

Here, it is undisputed that regardless of whether Ferguson's earlier acts were void, or merely voidable, she has not been the administrator of her husband's estate since March 2025, well before the judgment complained of in this case and Ferguson's filing of a notice of appeal. "When [Ferguson] was removed as administrator of the estate of [her] deceased [husband], [her] authority to act on behalf of the estate was suspended[.]" *Ray v. Jolles*, 280 Ga. 452, 453 (629 SE2d 250) (2006), citing *Doe v. Roe*, 23 Ga. 399, 401 (1857) (concluding acts by a former administrator that were taken after his authority was suspended were void). Because Ferguson can no longer act on the behalf of the estate "[s]he is not legally permitted to file an appeal on [the] behalf of the [e]state." *In re Estate of Wheeler*, 349 Ga. App. at 718(1).

We need not consider whether Ferguson's acts prior to her removal were void or voidable because the new administrator has taken no steps to continue this action. While Ferguson filed a motion to substitute parties, the record does not show that Okete joined that motion, filed her own motion to substitute as a party, or made any effort to intervene in the case after Ferguson's substitution motion was denied. See *Andrews v. Gloster*, 320 Ga. App. 192, 192–93 (739 SE2d 699) (2013) (recognizing individuals can acquire standing to appeal by becoming a party by way of intervention

and having being denied the right to do so). Nor has Okete taken any action to join Ferguson's appeal in this Court.

Because no party with standing has challenged the trial court's order, we must dismiss this appeal. *In re Estate of Wheeler*, 349 Ga. App. at 718(2) (dismissing appeal after concluding appellant was not a party and could not represent estate on appeal); *Andrews*, 320 Ga. App. at 193 (dismissing appeal after concluding appellant was not a proper party who could represent a trust to challenge the trial court's order).

2. Because we find that Ferguson did not have authority to appeal the trial court's decision, we need not address her remaining enumerations of error.

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