

**FIFTH DIVISION
BROWN, C. J.,
MERCIER, P. J., and EPPS, J.**

**NOTICE: Motions for reconsideration must be
received no later than 4:30 pm on the 10th day after
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October 21, 2026

In the Court of Appeals of Georgia

A26A1518. EVANS v. GWINNETT COUNTY et al.

BROWN, Chief Judge.

Sadie Evans appeals from the trial court’s order dismissing all of her claims against Gwinnett County (the “County”) as barred by sovereign immunity and some of her claims against a Gwinnett County law enforcement officer (the “Officer”) as being barred by the statute of limitation. Because Evans failed to follow the proper procedure for seeking appellate review, this direct appeal must be dismissed.

The record shows that in January 2025, Evans filed a complaint against the County and the Officer alleging that she was sexually assaulted and falsely imprisoned by the Officer while he was acting under color of state law on January 13, 2023. In March 2025, Evans voluntarily dismissed the complaint. In September 2025, she filed

a timely renewal action pursuant to OCGA § 9-2-61.¹ In the renewal complaint, Evans alleged causes of action against the Officer for assault and battery, sexual assault and battery, false imprisonment, intentional infliction of emotional distress, and punitive damages. She alleged causes of action against the County for respondeat superior, negligent employment, training and supervision, attorney fees, and punitive damages.

On October 21, 2025, the County filed a motion to dismiss all the claims against it on sovereign immunity grounds and, in the alternative, because the renewal action had not been served on the County within the statute of limitation. On December 10, 2025, Evans then amended her complaint by recasting her claims against the Officer for assault and battery, sexual assault and battery, and false imprisonment as violations of 42 USC § 1983 instead of state law.

¹ OCGA § 9-2-61(a) provides, in relevant part:

When any case has been commenced in either a state or federal court within the applicable statute of limitations and the plaintiff discontinues or dismisses the same, it may be recommenced in a court of this state or in a federal court either within the original applicable period of limitations or within six months after the discontinuance or dismissal, whichever is later[.]

On January 5, 2026, the trial court entered an order granting the County's motion to dismiss. In the order, the trial court held that the claims against the County were barred by sovereign immunity and the 42 USC § 1983 claims against the Officer were barred by the statute of limitation. Evans appeals from that order. Her state law claims against the Officer for intentional infliction of emotional distress, punitive damages, and attorney fees remain pending.

“It is well established that this Court has a solemn duty to inquire into our jurisdiction.” *Pathfinder Payment Solutions v. Global Payments Direct*, 344 Ga. App. 490 (810 SE2d 653) (2018) (punctuation omitted). In her appellate brief, Evans argues that this Court has jurisdiction over this appeal because the trial court's order granting the County's motion to dismiss was a final order. See OCGA § 5-6-34(a)(1)(B) (a direct appeal may be taken from “[a]ll final judgments, that is to say, where the case is no longer pending in the court below, except as provided in [OCGA §] 5-6-35”); *Barnes v. Barnes*, 361 Ga. App. 279, 280 (864 SE2d 119) (2021) (Generally, “a direct appeal requires that the judgment or order appealed be final, which means the case is no longer pending in the court below.”). However, appellees correctly argue that the order being appealed from is not a final order. Evans's claims against the Officer for

intentional infliction of emotional distress, punitive damages, and attorney fees remain pending below.

Although OCGA § 9-11-54(b) provides that a trial “court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties,” it must do so “only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” OCGA § 9-11-54(b). “In the absence of such [a] determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action[.]” OCGA § 9-11-54(b). The trial court’s order in this case makes no such determination. See *Knowles v. Old Spartan Life Ins. Co.*, 213 Ga. App. 204, 205(2) (444 SE2d 136) (1994) (trial court’s dismissal of the action against co-defendant Old Spartan did not act as a dismissal of separate claims against other co-defendants and thus, the trial court’s dismissal order was “not final within the meaning of OCGA § 5-6-34(a) because the case remains pending below”) (punctuation omitted).

The law, however, does permit “a direct appeal from certain non-final orders.” *Nance v. Houston County School Dist.*, 359 Ga. App. 204, 205 (857 SE2d 97) (2021). In

2025, the General Assembly amended OCGA § 5-6-34(a) to provide that a direct appeal is permitted from “[a]ll judgments, orders, or rulings in civil actions granting or denying or refusing to grant or deny immunity to one or more parties based upon sovereign ... immunity established by the United States Constitution or the Constitution, laws, or common law of this state[.]” OCGA § 5-6-34(a)(15). See Ga. Laws 2025, Act 298, § 1. See also *Ga. Dept. of Corrections v. Hagins*, ___ Ga. App. ___(2) (Case No. A6A1095, decided September 2, 2026). Thus, we must consider whether the trial court’s order granting the County’s motion to dismiss falls within this exception.

Georgia Courts have held that the “issue raised on appeal” rule applies to direct appeals filed pursuant to certain subsections of OCGA § 5-6-34(a). In *Voyles v. Voyles*, 301 Ga. 44, 46–47 (799 SE2d 160) (2017), our Supreme Court clarified that it is the issue raised on appeal that determines the proper appellate procedure to be followed, even if the order or judgment being challenged is of the type listed in OCGA § 5-6-34(a). *Voyles* interpreted OCGA § 5-6-34(a)(11), which provides a direct appeal from all judgments or orders “in child custody cases” that award, refuse to change, or modify child custody or that hold or decline to hold persons in contempt of child

custody orders. 301 Ga. at 46–47. In doing so, our Supreme Court held that “the proper appellate procedure to employ [in an appeal from an order rendered in a child custody action] depends upon the issue involved in the appeal, even if the order or judgment being challenged on appeal was the type listed in OCGA § 5-6-34(a)(11) and was entered in a child custody case.” Id. at 47. Accord *Barnes*, 361 Ga. App. at 280–81 (appellant was required to follow the procedures set forth in OCGA § 5-6-34(b) to seek review of a non-final order in a custody case when the order being appealed from did “not directly challenge the trial court’s substantive ruling on custody”); *Nance*, 359 Ga. App. at 206 (although OCGA § 5-6-34(a)(4) permits a direct appeal from orders “refusing applications ... for interlocutory or final injunctions[,]” it did not provide a basis for appellate jurisdiction in an appeal from such an order because appellant’s “failure to challenge the injunctive rulings on appeal preclude[d] her from challenging the other rulings that are not otherwise subject to direct appeal”).

Here, Evans does not challenge the trial court’s ruling on the sovereign immunity issues. Instead, she appeals from the trial court’s ruling that her 42 USC § 1983 claims against the Officer are barred by the statute of limitation. Because sovereign immunity is not raised an issue on appeal, this case is not subject to a direct

appeal pursuant to OCGA § 5-6-34(a)(15). Accordingly, we dismiss this appeal for lack of jurisdiction. See *Barnes*, 361 Ga. App. at 281; *Onyemobi v. Onyemobi*, 375 Ga. App. 538, 541 (916 SE2d 738) (2025).

Appeal dismissed. Mercier, P. J., and Epps, J., concur.