SECOND DIVISION
DOYLE, P. J.,
DAVIS and WHITAKER, JJ.

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October 30, 2026

In the Court of Appeals of Georgia

A26A0852. TALON ASSETS, LLC v. FULTON COUNTY.

DAVIS, Judge.

In this civil dispute stemming from a tax sale, Talon Assets, LLC ("Talon") appeals from the trial court's order granting Fulton County's motion to dismiss. On appeal, Talon argues that the trial court erred by (1) determining that its claims were barred by sovereign immunity; (2) applying the wrong standard in dismissing its claim for declaratory relief; and (3) dismissing its action with prejudice. Because we agree that Talon's petition was barred by sovereign immunity, we affirm the trial court's order granting the motion to dismiss, but we remand the case to the trial court for entry of an order dismissing the action without prejudice.

"Sovereign immunity is a threshold issue and if it does apply, a court lacks jurisdiction over the case and, concomitantly, lacks authority to decide the merits of a claim that is barred." *Henry County v. Greater Atlanta Home Builders Ass'n, Inc.*, 378 Ga. App. 721, 722–23(1) (927 SE2d 340) (2026). "[T]he trial court's ruling on a motion to dismiss on sovereign immunity grounds is reviewed de novo, while the factual findings are sustained if there is evidence supporting them." *Garner v. Clayton County*, 378 Ga. App. 618, 622(3) (926 SE2d 842) (2026). "The party seeking to benefit from a waiver of sovereign immunity bears the burden of establishing its existence." *Greater Atlanta Home Builders Ass'n, Inc.*, 378 Ga. App. at 723(1).

So viewed, the record shows that on June 6, 2023, the Fulton County Sheriff conducted a tax sale pursuant to a writ of Fieri Facias ("FiFa") on property located on Sims Street, with a parcel identification number of 14-0087-0008-025-6 ("the property"). Marathon Holdings, LLC was the owner of the property and the defendant in the writ of FiFa. Talon was the highest bidder at the tax sale and paid $220,000 to the Fulton County Sheriff for the tax deed. According to Talon, the property does not physically exist, and the Fulton County Board of Assessors erroneously created the parcel in its mapping systems. Talon further alleges that the

error caused the Fulton County Tax Commissioner's Office to wrongly issue tax liens against the property, which led the Fulton County Sheriff to erroneously conduct a tax sale on the property due to unpaid taxes. On September 15, 2023, Talon sent an email to Eugene Smith, an attorney for the Fulton County Sheriff, demanding a return of the funds it paid for the property and a cancellation of the tax deed.[1] Talon, however, has not been reimbursed.

Talon filed a petition for declaratory judgment in Fulton County Superior Court, seeking a declaration that the tax deed for the property is void ab initio and for Fulton County to return the funds it paid to purchase the property.[2] Talon alleged that sovereign immunity was waived under Article I, Section II, Paragraph V(b)(1) because it was seeking declaratory relief. Fulton County answered the complaint and filed a motion to dismiss, arguing that the petition should be dismissed because (1) the property does, in fact, exist, and the tax deed sufficiently describes the property; (2) the petition was barred by the caveat emptor doctrine; (3) the petition seeks a

[1] Talon also made a money rule demand under OCGA § 15-13-3 to the Fulton County Sheriff and the Fulton County Board of Commissioners.

[2] According to the trial court's order, before filing the instant action, Talon filed suit against Marathon Holdings, the Fulton County Sheriff, the Fulton County Board of Commissioners, and others to recover the money it paid for the property.

declaration regarding a past act; and (4) the petition was barred by sovereign immunity because Talon improperly sought monetary relief. Talon later filed a motion for summary judgment, arguing that no genuine issues of material fact remained and that it was entitled to judgment as a matter of law. After a hearing, the trial court entered an order granting Fulton County's motion to dismiss.[3] Pertinently, the court determined that Talon's petition was barred by sovereign immunity under Article I, Section II, Para. V(b)(4) because Talon sought monetary relief which is not permissible in a declaratory judgment action. This appeal followed.

1. Talon first argues that the trial court erred by determining that its petition was barred by sovereign immunity. We disagree.

"The Constitutional doctrine of sovereign immunity bars any suits against the State to which it has not given consent. This doctrine applies to actions against counties, such as Fulton County, as well." *Maat Concepts, Inc. v. Fulton County*, 380 Ga. App. 495, 498(1) (932 SE2d 825) (2026).

> In 2020, the Georgia Constitution was amended to provide a limited waiver of sovereign immunity for actions in the superior court seeking

[3] The trial court also denied Talon's motion for summary judgment in the same order.

> declaratory relief from acts of the state, any county, or certain specified state agencies outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the Constitution of the United States.

Id. (citation modified). Article I, Section II, Paragraph V(b)(1) of the Georgia Constitution now states in part:

> Sovereign immunity is hereby waived for actions in the superior court seeking declaratory relief from acts of the state or any agency, authority, branch, board, bureau, commission, department, office, or public corporation of this state or officer or employee thereof or any county, consolidated government, or municipality of this state or officer or employee thereof outside the scope of lawful authority or in violation of the laws or the Constitution of this state or the Constitution of the United States. Sovereign immunity is further waived so that a court awarding declaratory relief pursuant to this Paragraph may, only after awarding declaratory relief, enjoin such acts to enforce its judgment.

And notably, Paragraph V(b)(4) states that "[n]o damages, attorney's fees, or costs of litigation shall be awarded in an action filed pursuant to this Paragraph, unless specifically authorized by Act of the General Assembly." In fact, "the only claim for equitable relief that is expressly permitted under Paragraph V is an injunction." *Greater Atlanta Home Builders Ass'n, Inc.*, 378 Ga. App. at 724(1)(a).

Regarding declaratory judgments, we have explained that the Declaratory Judgment Act ("the Act") authorizes courts of this state "to declare rights and other legal relations of any interested party petitioning for such declaration in cases of actual controversy and in any civil case in which the ends of justice so require." *Maat Concepts, Inc.*, 380 Ga. App. at 499(1) (quotation marks omitted). "Although the Act is to be liberally construed and administered, the text of the Act also plainly states that its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Id. (quotation marks omitted).

> The Act is not meant to enforce accrued rights, as the Act does not replace existing remedies. Instead, the purpose of the Act is to remove the cloud of uncertainty with regard to the propriety of some future act or conduct, which is properly incident to his alleged rights and which if taken without direction might reasonably jeopardize his interest. Indeed, *Georgia case law has repeatedly rejected claims for declaratory judgment when a declaration of rights would not direct the plaintiff's future conduct or involved only a determination of rights that had already accrued.*

Id. (citation modified).

Applying this framework, we conclude that Talon has failed to establish that sovereign immunity had been waived for its declaratory relief claim. As stated above,

Talon's petition seeks a declaration that the tax deed is void ab initio and an order for Fulton County to return the funds it paid for the property. But critically, Talon does not seek an injunction, which is the only relief available under Article I, Section II, Paragraph V of the Georgia Constitution. Talon also seeks an order for Fulton County to reimburse it for the money paid for the property, which is also contrary to Paragraph V(b)(4)'s prohibition against monetary relief in a declaratory judgment action.[4] And although Talon seeks a declaration that the tax deed is void ab initio, such a declaration would not guide or direct *Talon's* future conduct and involves only a determination of rights that had already accrued. Indeed, Talon does not argue any uncertainty as to *its* conduct, but only argues uncertainty based "on [Fulton] County's refusal to honor Georgia law[.]" Talon's claim to declare the tax deed void is instead in essence a claim for equitable relief to cancel the deed,[5] which is not a claim for declaratory relief. In light of this record, the trial court correctly determined that Talon failed to show that sovereign immunity had been waived under Paragraph V,

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[4] Although Talon argues extensively that Fulton County's actions amounted to an unconstitutional taking, as Fulton County correctly argues, Talon did not argue this claim below in the trial court.

[5] See OCGA § 23-2-60 ("Fraud will authorize equity to annul conveyances, however solemnly executed.").

and thus the court properly granted Fulton County's motion to dismiss. See *Maat Concepts, Inc.*, 380 Ga. App. at 499–501(1) (petitioners failed to establish that sovereign immunity was waived for declaratory relief involving tax deed because the petition sought relief that was not permitted under Paragraph V).[6]

2. Talon further argues that even if dismissal of its action was appropriate, the dismissal should have been without prejudice. We agree.

"A motion to dismiss asserting sovereign immunity is based upon the trial court's lack of subject-matter jurisdiction, rather than the merits of the plaintiff's claim." *Fraser v. Glynn County*, 377 Ga. App. 662, 669(1)(c) (922 SE2d 825) (2025). Thus, where a superior court dismisses an action based on lack of subject matter jurisdiction, the dismissal should be without prejudice. Id. And where a trial court's dismissal order does not specify whether the dismissal was with or without prejudice, we presume that the action was dismissed with prejudice. *UCS Dials Mill Road, LLC v. Dep't Transp.*, 378 Ga. App. 713, 720(4) (927 SE2d 355) (2026). Here, in granting the motion to dismiss, the trial court's order does not specify whether the dismissal

[6] In light of this resolution, it is unnecessary to address Talon's claim that the trial court did not utilize the correct standard in dismissing its claim for declaratory relief.

was with or without prejudice. "As a result, we remand this case to the trial court for entry of an order dismissing [Talon's] complaint without prejudice." Id.

In sum, we affirm the trial court's order dismissing Talon's petition, but we remand the case for entry of an order dismissing Talon's petition without prejudice.

Judgment affirmed and case remanded with direction. Doyle, P. J., and Whitaker, J., concur.