

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

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September 18, 2026

In the Court of Appeals of Georgia

A26A1582. IN THE INTEREST OF M. R. S., a child.

BARNES, Presiding Judge.

The fourth appellate chapter in this long-running matter has its origin in the Cobb County juvenile court's June 2022 order terminating a mother's parental rights in her child. After the mother's trial counsel filed a faulty direct appeal, we granted two discretionary appeals, the first of which vacated the juvenile court's denial of the mother's post-trial motions and the second of which affirmed that denial.¹ The Supreme Court of Georgia granted certiorari and later ordered this Court to vacate the juvenile court's order dismissing the mother's motion for an out-of-time appeal and to remand with direction that the juvenile court "consider the mother's motion [for

¹ See *In the Interest of M. R. S.*, 373 Ga. App. 201 (907 SE2d 203) (2024) ("*M. R. S. I*").

an out-of-time application for discretionary appeal] pursuant to the guidelines set forth” in *In the Interest of B. R. F.*, 299 Ga. 294 (788 SE2d 416) (2016).² On remittitur from the Supreme Court, we so ordered the juvenile court. *In the Interest of M. R. S.*, 376 Ga. App. 478, 480 (2) (918 SE2d 829) (2025) (“*M. R. S. III*”).

On remand from our decision in *M. R. S. III*, the juvenile court entered an order granting the mother an out-of-time “appeal” based on ineffective assistance of counsel, but without making the required preliminary finding as to whether she had a right to counsel in the first place.³ We again granted the mother’s application for discretionary review. The Department of Human Services moved to dismiss this fourth appeal on the ground that we lack jurisdiction. We conclude that we have jurisdiction, but we once again vacate the juvenile court’s judgment because it failed to make the findings required by *M. R. S. III*.

² *In the Interest of M. R. S.*, 321 Ga. 521 (915 SE2d 630) (2025) (“*M. R. S. II*”).

³ See *M. R. S. III* at 479 (1), quoting *B. R. F.* at 299 (“‘the juvenile court must make the initial determination whether an indigent parent is entitled to file an out-of-time application for discretionary review to remedy ineffective assistance of counsel *if that parent was entitled to appointment of counsel as a matter of due process*’”) (emphasis added).

1. The Department has moved to dismiss this appeal on the ground that after the abolition of a judicially fashioned out-of-time appeal procedure by our Supreme Court in *Cook v. State*, 313 Ga. 471 (870 SE2d 758) (2022), that Court’s decision in *B. R. F.* is no longer good law, and that neither that decision nor our own previous decisions provide us with jurisdiction over an out-of-time appeal in a termination matter. But our Supreme Court, with full awareness of the history of and precedent governing this case, including its own decisions in *Cook* and *B. R. S.*, instructed this Court to “consider the mother’s claims about the denial of her motion for an out-of-time appeal.” 321 Ga. at 522.

Under the law of the case doctrine, any issue that was raised and resolved in an earlier appeal is the law of the case and is binding on this Court. [S]ee also OCGA § 9-11-60 (h) (“[A]ny ruling by the Supreme Court or the Court of Appeals in a case shall be binding in all subsequent proceedings in that case in the lower court and in the Supreme Court or the Court of Appeals as the case may be.”). The law of the case doctrine applies only when the same issue has been actually litigated and decided.

Hall v. Hill, 366 Ga. App. 285, 291-292(1)(b) (882 SE2d 34) (2022) (citation modified).

Our Supreme Court required us to consider the mother’s argument that she was entitled to an out-of-time appeal or application, and we did so, concluding that the juvenile court was required to make a determination in the first instance whether the mother was entitled to counsel on appeal. *M. R. S. II*, 321 Ga. at 522; *M. R. S. III*, 376 Ga. App. at 480 (2). We will not construe precedent for or against the establishment of our own jurisdiction when we are following explicit Supreme Court instructions in a matter now before us for the third time, when our decision implementing those instructions has not been appealed or overruled, and when the evidentiary posture of the case has not changed. See *Choate Constr. Co. v. Auto-Owners Ins. Co.*, 335 Ga. App. 331, 338-339 (1) (779 SE2d 465) (2015) (law-of-the-case doctrine applied when the evidentiary posture of a case had not changed on remand). The Department’s motion to dismiss is denied.

2. As we have noted, on direction by our Supreme Court to consider the mother’s argument that she was entitled to an out-of-time application or appeal, we vacated the juvenile court’s order and directed the juvenile court to “consider the mother’s motion [for an out-of-time application for discretionary appeal] pursuant to the guidelines set forth” in *In the Interest of B. R. F.*, 299 Ga. 294. See *M. R. S. III*, 376

Ga. App. at 480 (2). Instead, however, the juvenile court bypassed the preliminary question whether the mother was entitled to counsel and reached the premature conclusions that counsel had been ineffective and that she was entitled to an application or appeal.⁴ We must therefore vacate the juvenile court's order and remand the case once again so that the juvenile court can make the required preliminary finding as to whether the mother is entitled to counsel under the due process requirements laid out in *B. R. F.* If it finds that the mother is so entitled, the court may then proceed to the question whether counsel was ineffective.

⁴ The juvenile court found as follows:

In [*In the Interest of B. R. F.*], the court found that the juvenile court must make the initial determination whether an indigent parent is entitled to file an out-of-time application for discretionary review to remedy ineffective assistance of counsel *if that parent was entitled to appointment of counsel as a matter of due process.*

At the hearing of November 7, 2025, this court heard evidence and testimony requiring a FINDING that trial counsel for the mother was ineffective in its efforts to file the appropriate appeal and that said ineffectiveness was the sole reason for the inappropriate filing. Thus, this court FINDS and ORDERS that the mother DOES HAVE the right to file an out-of-time appeal. (Emphasis added.)

2. In light of our holding above, we need not reach the mother's contentions concerning the underlying termination order.

Judgment vacated and case remanded with direction. Markle and Hodges, JJ., concur.