

Court of Appeals of the State of Georgia

ATLANTA, October 21, 2026

The Court of Appeals hereby passes the following order:

A27D0205. IN THE INTEREST OF M. C., A CHILD (FATHER).

On August 24, 2026, the trial court dismissed the father's petition for legitimation and visitation. The father asked the trial court to reconsider this ruling, which it construed as, *inter alia*, a motion for new trial and denied on August 26, 2026. On October 1, 2026, the father filed this application for discretionary appeal.¹ We lack jurisdiction.

¹ While OCGA § 5-6-34(a)(11) authorizes direct appeals from judgments or orders "in child custody cases awarding, refusing to change, or modifying child custody," and visitation rights are a part of custody, *Vines v. Vines*, 292 Ga. 550, 551(2) (739 SE2d 374) (2013), this Court looks to the specific issue raised on appeal to determine whether a party is entitled to a direct appeal under this provision. See *Voyles v. Voyles*, 301 Ga. 44, 47 (799 SE2d 160) (2017). Here, the father does not challenge any ruling as to visitation. Moreover, because the father is incarcerated, any appeal he files in a civil case must be brought by discretionary application. See OCGA § 42-12-8; *Jones v. Townsend*, 267 Ga. 489, 490 (480 SE2d 24) (1997) (finding that "in appeals of civil cases filed by prisoners, there is no right of direct appeal. Instead, the party wishing to appeal must file an application directed to the appropriate appellate court."). See also *Finch v. Walden*, 372 Ga. App. 115, 119–20(1) (903 SE2d 802) (2024) (recognizing that child custody actions are civil actions). Accordingly, the father has no right to a direct appeal here and, although he filed on September 15, 2026, a notice of appeal in the trial court seeking discretionary review of the trial court's August 24, 2026 order, the notice of appeal was ineffective because he was required to file an application. Moreover, his September 15 filing cannot be construed as a timely application for discretionary appeal because an application must be filed in the appellate court. See OCGA § 5-6-35(d); Ga. Ct. App. R. 31 (explaining requirements for filing a discretionary application).

To be timely, a discretionary application must be filed within 30 days following entry of the order sought to be appealed. OCGA § 5-6-35(d); *Hill v. State*, 204 Ga. App. 582, 583 (420 SE2d 393) (1992). This deadline is jurisdictional, and this Court cannot accept an application for appeal not made in compliance with the statute. *Boyle v. State*, 190 Ga. App. 734, 734 (380 SE2d 57) (1989). Because the father filed this application for discretionary appeal 36 days after the denial of his motion for new trial, his application is untimely.²

For these reasons, we lack jurisdiction over this application for discretionary appeal, which is hereby DISMISSED.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 10/21/2026

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Christina Bailey Smith

, Clerk.

² Although the father indicates that he is seeking discretionary review of the August 24, 2026 order, we have given him the benefit of the date of the denial of his motion for new trial in assessing our jurisdiction. See OCGA § 5-6-35(d) (“When a motion for new trial, ... has been filed, the application shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion.”).