

and imposing sanctions and (2) denying their motion for substitution of judge. We dismiss the appeal and impose sanctions.

¶ 4

I. BACKGROUND

¶ 5 The decedent, Mary Ann Beyer, executed a last will and testament on December 20, 2011, appointing Sullivan as executrix and distributing her estate evenly between her children, Sullivan and Beyer. Decedent died on February 6, 2012. Sullivan filed a petition for probate of will and letters testamentary on February 10, 2012, and the letters of office were issued to her on February 14, 2012.

¶ 6 On April 5, 2012, Beyer filed a petition to terminate independent administration pursuant to section 28-4(a) of the Probate Act of 1975 (Act) (755 ILCS 5/28-4(a) (West 2012)). On April 11, 2012, attorney John Morel entered his appearance as additional counsel for Sullivan. On April 19, 2012, Beyer filed a discovery citation pursuant to section 16-1(a)(2) of the Act (755 ILCS 5/16-1(a)(2) (West 2012)). On July 5, 2012, Beyer filed a recovery citation pursuant to section 16-1(a)(1) of the Act (755 ILCS 5/16-1(a)(1) (West 2012)), seeking recovery of a missing coin collection and a McLean County land trust.

¶ 7 On July 18, 2012, Beyer filed subpoenas and notice of copying records to Martin O'Connor, the attorney who drafted decedent's will; Chris Gramm, the trustee of the land trust; and Dr. Ira Halperin, decedent's physician. On July 25, 2012, Sullivan filed a motion to quash the subpoena for discovery of documents served on attorney O'Connor, stating the requested documents were protected by the attorney-client privilege. On July 31, 2012, Beyer filed a response to the motion to quash, arguing the documents were subject to an exception to the attorney-client privilege.

¶ 8 On August 1, 2012, Sullivan filed a motion to compel or for a contempt citation, asking the trial court to compel Beyer to reimburse the estate for monies he spent or debt he incurred in the name of decedent's business. On August 9, 2012, Beyer filed a motion to dismiss the motion to compel pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2012)). On August 27, 2012, the court entered an order denying the motion to quash. The court found the documents sought by Beyer were subject to an exception to the attorney-client privilege.

¶ 9 On August 28, 2012, Sullivan filed a motion to reconsider and vacate the trial court's order denying the motion to quash. On August 29, 2012, Beyer filed a response to the motion to reconsider.

¶ 10 On September 10, 2012, Sullivan filed a motion for sanctions, claiming Beyer's recovery citation contained "multiple verified false allegations" and was made for the purpose of harassing Sullivan. Sullivan asked the trial court to impose sanctions against Beyer and assess attorney fees, costs, and other expenses.

¶ 11 On September 18, 2012, Beyer filed a response to the motion for sanctions and a countermotion for sanctions. Beyer argued the motion was "procedurally inappropriate and unfounded in law." In his countermotion, Beyer asked the trial court to enter sanctions against Sullivan pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994), claiming Sullivan's motion for sanctions "was filed for the improper purpose of circumventing the prescribed statutory procedure relating to civil procedure and the Recovery Citation, and/or to harass or otherwise offend Mr. Beyer."

¶ 12 On September 27, 2012, the trial court entered an order denying the motion to

reconsider and vacate. The court also ordered O'Connor to provide Beyer's counsel with the requested documents and set the matter for hearing on the motion for sanctions and motion to compel.

¶ 13 On October 5, 2012, Beyer filed a motion to compel and for sanctions, asking the trial court to order Sullivan to produce the information requested in the interrogatories previously filed on August 29, 2012, and for reasonable attorney fees as a result of filing the motion.

¶ 14 On October 12, 2012, attorneys Morel and O'Connor filed a motion to quash the subpoena previously issued for O'Connor to provide documents to Beyer's counsel. The motion argued the information sought was subject to the attorney-client privilege.

¶ 15 On November 9, 2012, Beyer filed a response to the motion to quash and petition for Rule 137 sanctions. Beyer argued counsel for Sullivan was asking for "a fourth opportunity" to argue the attorney-client-privilege issue with the only justification for the purpose of harassment or to cause unnecessary delay or needlessly increase the cost of litigation. Beyer requested the trial court order Sullivan to pay all attorney fees incurred as a result of the motion.

¶ 16 On November 13, 2012, Morel filed a supplement to the motion to quash, citing the attorney-client privilege and the Rules of Professional Conduct. He asked the trial court to deny Beyer's response to the motion to quash and petition for Rule 137 sanctions.

¶ 17 On November 15, 2012, the trial court conducted a hearing on the pending motions. The court ordered Sullivan to answer all discovery within 28 days and to allow Beyer to regain possession of his motorcycle. The court also denied Sullivan's motion for sanctions and her motion to quash.

¶ 18 On November 29, 2012, Beyer filed a motion for attorney fees as a supplement to

the response to the motion to quash and petition for Rule 137 sanctions. Beyer requested attorney fees and costs in the amount of \$4,086. On December 20, 2012, Beyer filed a motion for attorney fees seeking additional fees in the amount of \$360. He also filed a motion to compel and for sanctions.

¶ 19 On December 21, 2012, Sullivan filed a motion for substitution of judge pursuant to section 2-1001 of the Procedure Code (735 ILCS 5/2-1001 (West 2012)). Sullivan claimed the trial court exhibited prejudice to the estate through its various rulings. On December 27, 2012, Beyer filed a response to the motion for substitution of judge, claiming it was untimely and did not establish cause for substitution.

¶ 20 On December 31, 2012, the trial court conducted a hearing on the motion for substitution of judge and the motion for attorney fees. The court denied the motion for substitution of judge. The court also granted the motion for sanctions and ordered the estate or Morel individually to pay \$4,086 to Beyer's counsel.

¶ 21 On January 23, 2013, Sullivan filed a notice of appeal from the "Orders of Contempt entered on December 31, 2012." On January 30, 2012, Beyer filed a motion to deny a final and appealable order and compel payment. Beyer argued the December 31 order did not contain a written finding under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) indicating it was a final and appealable order and the trial court did not find Sullivan or Morel in contempt. On February 13, 2013, the trial court entered an order stating it had no jurisdiction to hear Beyer's motion to deny a final and appealable order due to the notice of appeal being filed from the order of sanctions.

¶ 22 On March 1, 2013, this court entered an order on consideration of Sullivan's

emergency motion for stay and sanctions. We noted Sullivan's January 23, 2013, notice of appeal failed to demonstrate under which supreme court rule it was filed. This court dismissed the appeal for want of either a final or appealable order. On March 14, 2013, this court allowed Sullivan's motion for leave to file an amended notice of appeal and reinstated the appeal. The amended notice of appeal indicated jurisdiction in this court was proper under Illinois Supreme Court Rule 304(b)(5) (eff. Feb. 26, 2010).

¶ 23

II. ANALYSIS

¶ 24

A. Jurisdiction

¶ 25 On appeal, Sullivan and Morel argue the trial court erred in holding them in contempt and imposing sanctions. Beyer, however, argues this court has no jurisdiction to hear this case under Illinois Supreme Court Rule 304(b)(5) because the trial court did not find appellants in contempt. We agree with Beyer.

¶ 26

An appellate court has a duty to consider its jurisdiction and must dismiss an appeal if that jurisdiction is lacking. *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1024, 822 N.E.2d 941, 942 (2005). Under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), when multiple parties or claims are involved, "an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." However, a Rule 304(a) finding is not required for orders "finding a person or entity in contempt of court which imposes a monetary or other penalty." Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010); see also *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1025, 793 N.E.2d 900, 904 (2003) (stating "an order finding a person in contempt and imposing a

monetary or other penalty is immediately appealable").

¶ 27 In the case *sub judice*, Beyer filed a petition for Rule 137 sanctions seeking costs and attorney fees in November 2012. Beyer claimed Morel, as counsel for the estate, had unnecessarily caused delay and harassment, and needlessly increased the cost of litigation by his repeated filing of the same motion to quash subpoena, refusal to comply with discovery requests and trial court rulings, and repeated filing of untimely and inappropriate motions for sanctions against Beyer's counsel.

¶ 28 In December 2012, the trial court conducted a hearing on the petition, and Beyer's counsel proceeded to recite his reasons for the requested relief. The court agreed with counsel's petition, and stated it was "going to award attorney fees for you having to file a motion to compel and appear and incur on behalf [of] your client needless attorney fees to prosecute the motion." The court awarded \$4,086 as a sanction. Nowhere in its oral ruling or its written order did the court indicate it was finding Sullivan or Morel in contempt.

¶ 29 Illinois Supreme Court Rule 137, along with its possible sanctions, "is aimed at the abuse of the judicial process by penalizing claimants who bring vexatious or harassing actions based upon unsupported allegations of law or fact. [Citation.] The rule is aimed at the pleadings and papers—the work product, if you will—of attorneys." *In re Marriage of Oleksy*, 337 Ill. App. 3d 946, 949, 787 N.E.2d 312, 315 (2003). On the other hand, "[c]ontempt of court is an act that is calculated to embarrass or obstruct a court in the administration of justice, or that is calculated to lessen its authority or dignity." *Oleksy*, 337 Ill. App. 3d at 949, 787 N.E.2d at 315.

¶ 30 Here, the trial court did not hold Sullivan or Morel in contempt of court. Instead,

the court sanctioned Sullivan and Morel under Rule 137 and awarded attorney fees. Since no contempt finding was made and no contempt order entered, Rule 304(b)(5) allowing for appeals from orders finding a person in contempt does not apply. See *County of Cook v. Illinois Fraternal Order of Police Labor Council*, 358 Ill. App. 3d 667, 671, 832 N.E.2d 395, 400 (2005) (finding that in the absence of a contempt order, the appellate court has no jurisdiction under Rule 304(b)(5) to review the trial court's judgment on the production of compliance reports); *Lewis v. Family Planning Management, Inc.*, 306 Ill. App. 3d 918, 924, 715 N.E.2d 743, 747-48 (1999) (finding a lack of appellate jurisdiction under Rule 304(b)(5) as no contempt finding had been made and no penalty as a result of a contempt finding had been imposed). As claims in this case are still pending and the sanction order does not constitute a final judgment adjudicating all of the claims of the parties, this court has no jurisdiction over this appeal. See *Gilkey v. Scholl*, 229 Ill. App. 3d 989, 992, 595 N.E.2d 183, 186 (1992). Thus, we must dismiss the appeal.

¶ 31

B. Sanctions

¶ 32 In his brief, Beyer requests this court impose sanctions against Sullivan and Morel pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) for prosecuting this appeal. Beyer contends appellants have erroneously and falsely alleged this court has jurisdiction pursuant to a contempt order when the trial court did not hold them in contempt.

¶ 33 Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) provides as follows:

"If, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause

unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal or other action will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense.

Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees.

A reviewing court may impose a sanction upon a party or an attorney for a party upon the motion of another party or parties, or on the reviewing court's own initiative where the court deems it appropriate. If the reviewing court initiates the sanction, it shall require the party or attorney, or both, to show cause why such a sanction should not be imposed before imposing the sanction.

Where a sanction is imposed, the reviewing court will set forth the reasons and basis for the sanction in its opinion or in a separate written order."

"Rule 375 sanctions are penal and should be applied only to those cases falling strictly within the terms of the rule." *Belfour v. Schaumburg Auto*, 306 Ill. App. 3d 234, 244, 713 N.E.2d 1233, 1240 (1999) (citing *Beverly v. Reinert*, 239 Ill. App. 3d 91, 101, 606 N.E.2d 621, 627 (1992)). This court has jurisdiction to consider the question of sanctions even though we have dismissed the appeal for lack of jurisdiction. See *Gilkey*, 229 Ill. App. 3d at 993, 595 N.E.2d at 186 (citing *Kennedy v. Miller*, 197 Ill. App. 3d 785, 788, 555 N.E.2d 105, 108 (1990)).

¶ 34 In this case, the trial court did not hold Sullivan and Morel in contempt and did not impose sanctions after entering a contempt finding. At the February 7, 2013, hearing on the motion to deny a final and appealable order, the court noted it did not make a contempt finding. Thus, Sullivan's and Morel's claim in their March 14, 2013, amended notice of appeal that jurisdiction is proper under Rule 304(b)(5) based on "Orders of Contempt" is clearly erroneous. Given the procedural history of this case and considering Sullivan's and Morel's filing of multiple motions after the trial court had ruled against them, it is apparent that Sullivan and Morel have taken this appeal for the improper purpose of delay, harassment, and causing needless expense. Accordingly, we find sanctions are appropriate. Beyer's counsel has filed an affidavit and a detailed statement of time spent and attorney fees incurred as a result of defending this appeal. We enter judgment against Sullivan and Morel and order them to pay \$8,196 to the law firm of Hartweg, Turner, Wood & DeVary, P.C., for services rendered. See *Amadeo v. Gaynor*, 299 Ill. App. 3d 696, 706, 701 N.E.2d 1139, 1146 (1998).

¶ 35

III. CONCLUSION

¶ 36 For the reasons stated, we dismiss the appeal and impose sanctions against appellants under Illinois Supreme Court Rule 375(b).

¶ 37 Appeal dismissed; sanctions imposed.