

No. 1-15-2144

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> FORMER MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
DEBRA CAMINITI,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 06 D 1504
	)	
JOSEPH CAMINITI,	)	
	)	
Respondent-Appellee.	)	Honorable
	)	Timothy P. Murphy,
	)	Judge Presiding.

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PRESIDING JUSTICE ELLIS delivered the judgment of the court.  
Justices McBride and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* Appeal dismissed. This court lacks jurisdiction where Rule 137 motion for sanctions remained pending in trial court.

¶ 2 Petitioner Debra Caminiti appeals from the trial court's order terminating the maintenance that was awarded pursuant to a judgment of dissolution of marriage. Respondent Joseph Caminiti, along with contesting the merits of Debra's appeal, contends that this court lacks jurisdiction to hear Debra's appeal because a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013) remains pending in the trial court. We agree that, because of the pending Rule 137 motion, Debra's appeal is premature and we dismiss her appeal.

¶ 3

## I. BACKGROUND

¶ 4 Joseph and Debra married on June 19, 1982 and divorced on October 20, 2008. In the judgment of dissolution of marriage, the trial court awarded Debra monthly maintenance, to be reviewable in 60 months from the entry of the judgment.

¶ 5 On September 10, 2013, Joseph filed a petition to terminate maintenance that he later amended. Debra filed a petition to review and extend maintenance, and both parties filed responses to each others' respective petitions.

¶ 6 The trial court held an evidentiary hearing on the maintenance petitions that began on August 4, 2014 and, after periodic continuances, concluded on February 3, 2015. On January 8, 2015, Joseph filed a Rule 137 motion for sanctions that claimed that Debra's attorney had made misstatements in a response to Joseph's motion to close discovery.

¶ 7 On February 3, 2015, the last day of the maintenance hearing, Joseph's counsel referred to the Rule 137 motion and asked the court to enter an order giving Debra's counsel time to respond to it and setting oral argument. The trial court gave Debra's counsel 28 days to respond and set a status date for the Rule 137 motion for March 10, 2015. Debra filed her response to the Rule 137 motion on March 3, 2015.

¶ 8 On April 9, 2015, the trial court entered an order continuing the Rule 137 motion for a status report on June 2, 2015. On June 26, 2015, the court set argument on the Rule 137 motion for September 1, 2015.

¶ 9 On July 2, 2015, the court entered an order terminating maintenance. Debra appealed from the order on July 27, 2015, giving rise to this appeal. On July 31, 2015, the trial court continued the hearing on the Rule 137 motion to September 11, 2015.

¶ 10 On September 9, 2015, in this court, Joseph moved to dismiss Debra's appeal on the basis that his Rule 137 motion had not yet been ruled on by the trial court. According to Joseph, the pending Rule 137 motion made Debra's July 27, 2015 notice of appeal premature.

¶ 11 On September 11, 2015, the parties convened in the trial court, where the court noted that the Rule 137 motion was "set for status." The parties debated whether there was a stay on the proceedings in light of Debra's appeal. Joseph's counsel argued that Debra's appeal was premature because the trial court had not yet ruled on the Rule 137 motion. The court continued the case to October 23, 2015 for a hearing on the Rule 137 motion.

¶ 12 On September 22, 2015, a different division of this court denied Joseph's motion to dismiss the appeal from the maintenance order in a one-page order without explanation.

¶ 13 Back in the trial court, the parties discussed the impact of this court's denial of Joseph's motion to dismiss the appeal. The trial court stated that it was "bound by the Appellate Court's order" and that this court "clearly \*\*\* believe[s] the issue is ripe." On October 9, 2015, the trial court stayed all proceedings in the trial court "until further notice" and struck the October 23, 2015 hearing date.

¶ 14 **II. ANALYSIS**

¶ 15 Joseph continues to challenge this court's jurisdiction to hear this appeal. He argues that the pending Rule 137 motion in the trial court rendered Debra's notice of appeal premature. Debra contends that this court has jurisdiction because the pending Rule 137 motion is unrelated to the trial court's judgment terminating maintenance. Whether an order is final and appealable is a question of law that we review *de novo*. *In re Marriage of Gutman*, 232 Ill. 2d 145, 150 (2008).

¶ 16 Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) provides that every final judgment in a civil case may be appealed by filing a notice of appeal. Illinois Supreme Court Rule 303(a)(1)

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(eff. Jan. 1, 2015) further provides that “[a] judgment or order is not final or appealable *while a Rule 137 claim remains pending* unless the court enters a finding pursuant to Rule 304(a).” (Emphasis added.) Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) provides that a party may appeal from a judgment that does not dispose of all claims in a case “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.”

¶ 17 In this case, the parties do not dispute that there is a Rule 137 motion pending and that the trial court’s June 2, 2015 maintenance order did not include a Rule 304(a) finding. Thus, pursuant to the plain language of Rule 303(a)(1), the trial court’s July 2, 2015 order terminating maintenance is not final or appealable, and we lack jurisdiction to consider Debra’s appeal. See, e.g., *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 340 (2001); *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 468 (1990); *Peabody Coal Co. v. Industrial Comm’n*, 307 Ill. App. 3d 393, 395-96 (1999).

¶ 18 Debra cites *In re Marriage of Carr*, 323 Ill. App. 3d 481 (2001), and *In re Marriage of DeMaret*, 2012 IL App (1st) 111916, in support of her argument that we have jurisdiction. In both *Carr* and *DeMaret*, the courts held that a pending motion for attorney fees did not prevent a postdissolution judgment from becoming final and appealable. *Carr*, 323 Ill. App. 3d at 485; *DeMaret*, 2012 IL App (1st) 111916, ¶ 38. But neither *Carr* nor *DeMaret* dealt with a pending Rule 137 motion for sanctions; both involved petitions for attorney fees under section 508 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508 (West 2014) (permitting party in divorce case to petition for contribution to attorney fees)). Unlike a Rule 137 motion, a pending section 508 petition is not listed in Rule 303(a)(1) as a type of pending motion that will

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render a judgment nonfinal. Because this case involves a pending Rule 137 motion, *Carr* and *DeMaret* do not apply.

¶ 19 We recognize that this court previously denied Joseph's motion to dismiss for lack of jurisdiction. We regret any confusion or inconvenience that prior ruling may have caused, but it does not bind this panel, nor does it prevent us from reconsidering our jurisdiction. See *People v. Van Cleve*, 89 Ill. 2d 298, 304 (1982) (“[A] court possesses inherent power to correct its interlocutory rulings.”); *People v. Warren*, 2016 IL App (1st) 090884-C, ¶ 64 (appellate court may change ruling provided it still has jurisdiction). To the contrary, we have a duty to consider our own jurisdiction, even if no party has raised it. *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985). Thus, our prior ruling on Joseph's motion to dismiss does not preclude us from now finding that we lack jurisdiction.

¶ 20 Because the Rule 137 motion remains pending in the trial court, the trial court's order terminating maintenance is not final and appealable absent any Rule 304(a) finding. Thus, Debra's notice of appeal is premature, and we lack jurisdiction to consider her appeal.

¶ 21 Joseph also argues that the trial court's maintenance judgment was not final because the trial court did not rule on his request for repayment of the maintenance he paid while his petition to terminate maintenance was pending. But since we have already determined that the pending Rule 137 motion deprives us of jurisdiction, we need not determine whether the pending petition for repayment does the same. Because the pending Rule 137 motion renders the June 2, 2015 maintenance order nonfinal, the trial court is free to modify that order to include a disposition of Joseph's repayment claim. See *Kral v. Fredhill Press Co., Inc.*, 304 Ill. App. 3d 988, 993 (1999) (where judgment is not final, “ ‘the circuit court retains jurisdiction over the entire cause, including the power to revise any or all judgments at any time prior to the entry of a judgment

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adjudicating all claims.’ ” (quoting *Peterson Bros. Plastics, Inc. v. Ullo*, 57 Ill. App. 3d 625, 630 (1978)).

¶ 22 Appeal dismissed.