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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

KUHN, MITCHELL, MOSS, MORK, KOC SIS AND LECHNOWITZ, LLC,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff and Counterdefendant- Appellee,)	
)	
v.)	No. 09-SR-997
)	
MICHAEL N. RIPANI,)	
)	
Defendant and Counterplaintiff- Appellant)	Honorable
)	Hollis L. Webster and
(Kathleen Kenny, Counterdefendant- -Appellee.))	John T. Elsner, Judges, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Burke and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in denying counterplaintiff's motion for leave to further amend his countercomplaint or in granting summary judgment in favor of the counterdefendants.

¶ 2 In April 2007, the defendant and counterplaintiff, Michael Ripani, filed a petition for dissolution of marriage from his then wife, Kristin. To represent him in the divorce, he engaged the counterdefendant, Kathleen Kenny, and her firm, the plaintiff and counterdefendant, Kuhn,

Mitchell, Moss, Mork, Kocsis & Lechnowitz, LLC (“KMM”). After KMM filed suit against Ripani to collect attorney fees he owed it, Ripani filed a counterclaim for legal malpractice against Kenny and KMM, alleging that Kenny wrongly advised him with the result that he entered into a marital settlement agreement (“MSA”) that, among other things, forced him to pay child support on income that he did not receive. The trial court granted summary judgment in favor of the counterdefendants on the counterclaim. After Ripani’s motion to reconsider was denied, he filed this appeal. We affirm.

¶ 3

BACKGROUND

¶ 4 Ripani and Kristin were married in 1991. During the marriage, they had two children. Ripani was an attorney and a certified public accountant (CPA) who had been employed at a variety of law firms in the Chicago area, practicing primarily in commercial litigation.

¶ 5 Ripani filed a petition for dissolution on April 18, 2007. At that time, he was a partner at a well-known law firm and was earning a base salary of \$120,000 per year plus bonuses. As mentioned, he retained Kenny and KMM to represent him. The parties entered into discovery and a trial date of May 6, 2008, was set.

¶ 6 Within the first year after Ripani retained Kenny and KMM, Kenny advised Ripani that his child support obligation would be 28% of his net income pursuant to the relevant statutory guidelines. Kenny later provided Ripani with the statutory cites to the portions of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2008)) related to the setting of child support and maintenance. Kenny also frequently advised Ripani that child support was always modifiable, by law. Ripani concedes that, in March 2008, Kenny clarified that child support was modifiable upon a showing of a substantial change in circumstances.

¶ 7 During the dissolution proceedings, the parties continued to live in the marital residence with their children, and they had frequent communications outside the presence of their attorneys

regarding dissolution-related matters. Ripani often emailed Kenny about these communications, asking questions and receiving legal advice in Kenny's responses. (Ripani later submitted many of these emails and responses as exhibits to filings in his legal malpractice case against Kenny and KMM, and much of our factual summary here is drawn from these emails.) Ripani was also quite active in directing the conduct of the case, at one point serving discovery that he had drafted without his attorney's review.

¶ 8 By December 2007, the parties were involved in negotiating a marital settlement agreement (MSA). Ripani emailed Kenny that he and Kristin had discussed \$4,500 per month in unallocated support; Kenny responded that she viewed this as the top limit that would likely be imposed by the trial court and reminded him that, because this entire amount would be tax deductible if the support were unallocated, his income would be increased by approximately \$1,400 per month of taxes he would otherwise have paid.

¶ 9 The most contentious issue between the parties for some time was custody. However, in March 2008, Ripani informed Kenny that he and Kristin had reached an agreement regarding joint custody of the children and visitation. On March 17, the trial court held a pretrial with the parties and their attorneys and indicated that, if the case went to trial, it would be likely to order the following: the sale of the marital residence, with Kristin receiving 60% of the proceeds and Ripani receiving the remaining 40%; the equal division of the parties' retirement benefits; and that Ripani pay \$1,400 per month in maintenance (to terminate if Kristin earned more than \$50,000) and child support of \$1,873 per month (an amount equal to 28% of Ripani's net monthly pay) plus 28% of any bonuses.

¶ 10 Only a few days after the pretrial, on March 20, Ripani was terminated from his employment and was told that his last day of work would be April 30, 2008. Ripani immediately informed Kenny of his termination.

¶ 11 On March 28, 2008, Ripani sent Kenny a listing of settlement terms he and Kristin were discussing, along with questions about those terms. Regarding support, Kristin wanted \$4,000 per month, not including Ripani's share of the property tax on the marital residence; Ripani's offer had been \$3,950 inclusive of the taxes, a difference of about \$400 per month. Ripani told Kenny that he supposed his only alternative was the allocated support of \$3,270 recommended by the trial court (\$1,873 in child support and \$1,400 of maintenance), but that would mean that the maintenance was reviewable, which he did not want. Kenny advised him to stand pat, and continued, "It will be important to indicate in the final agreement that this unallocated support is based upon your annual gross income of \$120,000. This way, if you end up unemployed for an extended period, or you end up with a job at a significantly lower salary, you will have the ability to petition the court for a reduction. So you want to make sure that the unallocated supported is non-reviewable, but NOT non-modifiable."

¶ 12 Ripani also indicated that Kristin had told him that child support and maintenance would have to be based upon his former salary and his only option if he could not pay the full amount would be to accumulate an arrearage. He asked if the trial court would really make him pay support based on an annual salary of \$120,000 if he were not making that much. Kenny responded that she would not recommend that he agree to any level of support being non-modifiable. Kenny further stated that any support scheme Ripani and Kristin worked out would need to include the factors upon which it was based: a presumed income of \$120,000 for Ripani, and a gradually increasing presumed income of \$25,000 to \$40,000 for Kristin. She continued: "If you get a job at a much lower rate of pay, then you will need to petition the court for a reduction in support. You need to have that ability, otherwise I would not recommend that you settle at all." Kenny stated that, in her view, if Ripani rejected the settlement and proceeded to trial, the court would be unlikely to award Kristin any maintenance because of Ripani's

unemployment, and would instead reserve the issue. As for child support, although the court would order Ripani to pay an amount that “very well may be based upon your \$120K income *** that also would be subject to modification upon your finding a new job.” Kenny then further advised Ripani that modifications to support obligations were typically retroactive to the date on which a petition to modify was filed. Kenny concluded: “I know that you and Kristi REALLY want to get your case finished and over with. But I really don’t have a good feeling about setting any support figure unless the written agreement is unequivocally clear that the support will be subject to modification in light of your new circumstance of unemployment and the significant prospect that your subsequent employment may be at a lower rate of pay.”

¶ 13 On April 7, Ripani again reported to Kenny about the ongoing negotiations. Regarding visitation, he reported that Kristin would not agree to split the summer school vacations with him unless he waived his right to seek a downward modification of child support. He did not think that would be fair, and wondered why he would agree to pay more than 28% of his income for child support. He asked what the trial court would be likely to do if he were unable to pay the agreed-upon level of child support and maintenance. Kenny’s response is not in the record.

¶ 14 On April 23, Ripani dropped off at Kenny’s office a document outlining the terms of his settlement agreement with Kristin. He asked Kenny to review it, but not to prepare an agreement yet “in case something comes up.” On April 25, Kenny responded with a detailed analysis of the terms. Regarding the child support, Kenny advised: “[M]ake sure that what you and Kristi are talking about is unallocated family support and NOT child support. As you know these are two very different things. Your agreement says that the support can increase if your income increases—but doesn’t say anything about a decrease if your income decreases. Instead, it should just say that the unallocated support is subject to modification upon a substantial change in circumstances, but that in any event, it will not be extended beyond the three-year period.”

She closed by asking Ripani to let her know if she should draft the MSA and joint parenting agreement, noting that “[o]ur trial date is looming close and we need to get this done.” On April 28, Ripani emailed back, saying that he and Kristin had “finalized everything” and he would drop off the terms to Kenny no later than the next morning, and asking Kenny to draft the MSA “to enter on May 6.” He added, “If I have agreed to something stupid, please let me know immediately.”

¶ 15 At noon the next day (April 29), Ripani emailed Kenny to say that he had dropped off the settlement terms, highlighting matters that were new and not yet agreed upon. He identified six issues that remained to be resolved; they did not include child support or maintenance. He commented that both he and Kristin knew “this ha[d] to settle” and that they could not afford “a trial or any preparation” for trial. Kenny responded a few hours later with comments on the terms. Regarding the support Ripani would be paying, she stated: “I’m confused about the child support and maintenance provision. It appears that you’re agreeing to pay her \$3,775 per month for three years even if your income is considerably lower than \$120K, but you’ll agree to an increase in support if your income exceeds \$120K.” Kenny also advised Ripani that it would take some time for the drafts to be approved by both Kristin and her lawyer, and cautioned him that she would need to begin preparing for trial the next day if the parties had not reached a complete agreement.

¶ 16 The record contains a letter from Kenny to Kristin’s attorney, dated May 5, 2008. The letter stated that Ripani had reviewed a draft MSA tendered by Kristin the day before, and set out various changes requested by Ripani. The sole change requested by Ripani relating to maintenance or child support was a clarification that the agreed maintenance of \$1,400 per month was non-reviewable.

¶ 17 On May 5, 2008, the parties and their attorneys met and executed an MSA. Realizing that a provision relating to claiming the children as dependents for tax purposes had been omitted, Kenny hand-wrote such a provision into the agreement, and the parties initialed it. The MSA provided that both parties would continue to live in the marital residence until Ripani secured full-time employment. During that time, Ripani would not pay child support or maintenance; rather, both parties would deposit their incomes into a joint account to be used for household expenses. The provisions relating to child support and maintenance set out allocated rather than unallocated support and read, in pertinent part, as follows:

“MICHAEL shall pay to KRISTIN maintenance in the amount of \$1,400 per month commencing upon entry of the Judgment for Dissolution of Marriage for a continuous period of forty eight (48) months following the 1st day of the month after MICHAEL vacates the marital residence as further defined herein. Said maintenance is non-modifiable and non-reviewable. ***”

“Upon MICHAEL’s obtaining full time employment or the sale of the marital residence (whichever occurs first), MICHAEL shall pay to KRISTIN child support in the amount of \$1,873 per month as and for child support for the 2 minor children based upon imputed income of \$120,000 plus 28% of the net income over base salary. Said imputed income is based upon MICHAEL’s wage history as a practicing attorney. ***”

¶ 18 Later that same day, the parties appeared in court for a prove-up of the dissolution. On direct examination, Ripani testified as follows:

Q: [KENNY] Now you and Kristin have reached a full and final settlement of all issues of your marriage; is that correct?

A: [RIPANI] That’s correct.

Q: And you have entered into a written marital [*sic*] settlement agreement and a written joint parenting agreement; is that correct?

A: That's correct.

Q: Okay. Showing you Exhibit Number 2 for identification. Is this the marital settlement agreement which you and Kristin have entered into?

A: Yes.

Q: Turning to the last page of the agreement; is that your signature and Kristin's signature that appears there?

A: Yes.

Q: Do you believe that this agreement fully and finally settles all the financial issues of your marriage?

A: Yes.

Q: Did you enter into this freely and voluntarily?

A: Yes.

Q: And although this draft is a very, very recent draft[,] [y]ou've had the opportunity to review the prior drafts and you're aware of all of the contents of this agreement?

A: Yes.

Q: Now pursuant to this agreement, you have committed to paying maintenance to Kristin in the amounts [*sic*] of \$1400 per month for 48 months and that maintenance will be non[-]modifiable and non[-]reviewable; is that correct?

A: That's correct.

Q: Now Mr. Ripani, you are currently unemployed; is that right?

A: That's correct.

Q: And you have agreed nevertheless that you are going to be responsible and obligated for this maintenance obligation, correct?

A: That's correct.

Q: Now pursuant to this agreement you and your wife have agreed that this maintenance obligation will not take effect until such time as you move out of the marital residence?

A: That's correct.

Q: You have also agreed that you are going to pay child support to Kristin for the two minor children in the amount of \$1,873 per month, correct?

A: That's correct

Q: And that is based on your prior income of \$120,000 per annum, correct?

A: That's correct."

During Ripani's cross-examination, a question arose about a provision of the MSA giving Kristin the option of buying out Ripani's share of the marital residence. The trial court stopped the prove-up and took a brief recess to allow the parties to confer. Once the parties had done so, the prove-up continued.

¶ 19 At the close of the testimony, the trial court found that grounds for dissolution had been proven and that the MSA reached by the parties was not unconscionable. The court entered a judgment for dissolution of marriage incorporating the MSA and the parties' joint parenting agreement.

¶ 20 Ten months later, in March 2009, Ripani moved out of the marital residence. Although he had found relatively regular contract work as an attorney, he did not have full-time work. The record reflects that he earned about \$50,000 in 2008 and about \$73,000 in 2009 from this

contract work. (Ripani's 2008 income also included income from his former employer, with the result that his total income for that year was about \$137,000).

¶ 21 As of April 2009, Ripani began paying maintenance in the full amount. He also began paying child support, but he paid only the amount that he calculated represented 28% of his net income for that month. In April 2009, for instance, he paid \$544 in child support.

¶ 22 On April 29, 2009, Ripani filed a motion to modify his child support obligation, arguing that: the amount of child support required under the MSA was based on imputed income; at the time they executed the MSA, both he and Kristin had expected that he would soon be able to find work at his former income level; he had not been able to do so despite his best efforts; and this inability to find work at a similar income level was a substantial change in circumstances justifying modification. Thereafter, Kristin filed a petition for a rule to show cause based on Ripani's continued child support payments of less than \$1,873 per month.

¶ 23 Separately, in April 2009, KMM filed a separate breach of contract action seeking to recover about \$9,000 in legal fees that it contended Ripani owed. Ripani filed a counterclaim alleging legal malpractice by KMM and Kenny.

¶ 24 On October 27, 2009, Judge Linda Davenport, the trial court judge who had presided over the dissolution proceedings and was presiding over the post-decree matters, heard oral argument on Ripani's petition to modify his child support obligation and Kristin's petition for a rule to show cause. Judge Davenport denied Ripani's petition, finding that there had been no substantial change in circumstances because Ripani had had zero income (apart from unemployment benefits) at the time he agreed to pay \$1,873 in child support, and he now had income of about \$73,000 per year. Judge Davenport further found that, because it was undisputed that Ripani had had the means to pay \$1,873 per month in child support (Kristin had just paid him \$30,000 as part of buying out his share of the marital residence) but he chose not to

do so, he was in indirect contempt of court. She imposed two penalties: incarceration (which Ripani avoided by paying the arrearage in full) and the payment of attorney fees incurred by Kristin in bringing the petition for a rule to show cause.¹

¶ 25 In August 2011, Ripani filed an amended counterclaim. Although the counterclaim contained counts titled “negligence,” “breach of oral contract,” “breach of fiduciary duty,” and “gross negligence,” the allegations of legal malpractice were largely identical. As they related to the child support provision contained in the MSA, all of the counts alleged that KMM failed to advise Ripani that: the provision would require him to pay child support at an amount in excess of the 28% statutory rate; he would be required to pay child support of \$1,873 irrespective of his income level even if his gross income level was less than \$120,000 per year; he would have to

¹ Although Ripani appealed these rulings, we were unable to reach the merits of either of them. See *In re Marriage of Ripani*, No. 2-09-1250 (unpub. order dated Sep. 30, 2010). We lacked jurisdiction to review Judge Davenport’s denial of the petition to modify child support because, at the time the appeal was filed, other matters were still pending in the trial court and the ruling contained no finding pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Further, although we had jurisdiction to review the finding of contempt, we found that Ripani forfeited his ability to appeal that finding because he had purged the contempt by paying his arrearage in full. Ripani’s petition for rehearing was untimely, preventing us from taking any further action with respect to the appeal. Although it appears that the parties and the trial court may have focused incorrectly on the change between Ripani’s actual income at the time of the prove-up (essentially zero) and at the time of the motion to modify, instead of focusing on the change between Ripani’s imputed income (the basis for the child support level in the MSA) and his later income, we are precluded from addressing that issue as it is not before us in this appeal.

take affirmative steps (such as filing a petition to modify) if he remained unemployed and wished to modify his child support obligation; he would be required to pay child support based upon an imputed gross income of \$120,000 per year even if his actual gross income was less than that; and he could be subjected to civil or criminal penalties if he did not pay the \$1,873 child support obligation contained in the MSA. The counts also contained allegations of legal malpractice relating to the MSA provisions governing maintenance and disposition of the marital residence. Finally, the last two counts (breach of fiduciary duty and gross negligence) also asserted that KMM and Kenny purposely structured the child support provision to generate additional legal fees because Ripani would have to move to modify child support.

¶ 26 On September 13, 2012, Ripani filed a motion for leave to further amend his countercomplaint to add a claim for negligent infliction of emotional distress. This claim was based on allegations that the terms of the MSA were so onerous that Ripani had been required to move into his mother's house (25 miles away from his children), thereby impairing his ability to maintain his desired level of parenting time with his children and causing him emotional distress. KMM argued that the motion should be denied because the proposed amendment was untimely: the case had been pending for three years and there were only a few more months before the scheduled trial date, and the new claim would require additional discovery, potentially including an expert psychological examination of Ripani. In addition, KMM argued that only pecuniary damages were recoverable for legal malpractice and that personal injuries were not recoverable under either a contract or negligence theory of legal malpractice. Thus, a claim for negligent infliction of emotional distress would not be viable in the context of a legal malpractice action. Ripani responded that the viability of the claim he wished to add should not be considered in determining whether to allow the amendment; rather, any such substantive arguments were

properly addressed in a separate motion to dismiss. The trial court denied the motion to amend, finding that it was untimely and that “there were plenty of previous opportunities to amend.”

¶ 27 A few weeks later, KMM filed a motion for summary judgment on Ripani’s counterclaims. KMM argued that all of the counterclaims raised the same allegations of legal malpractice and were barred by judicial estoppel because Ripani had testified at the prove-up that he understood the MSA and entered into it voluntarily.

¶ 28 The trial court granted the motion for summary judgment. In announcing its ruling, it commented that it had reviewed all of the materials submitted by the parties and stated:

“I cannot find a material issue of fact. In my judgment, the record is clear, that Mr. Ripani was advised by Miss Kenny prior to the prove-up that child support was always modifiable upon a showing of substantial change in circumstance. That’s what the record shows.

And Mr. Ripani then voluntarily entered into a marital settlement agreement which precludes his ability at this time to prove his case of legal malpractice and breach of contract or breach of fiduciary duty.

Mr. Ripani simply cannot take a contrary position in this proceeding to the position that he took in the underlying divorce case. In my judgment, he is unable to prove the elements necessary to be successful on any of the pending causes of action.

Mr. Ripani is presumed to know the contents and meaning of the obligations he undertakes [*sic*] *** when he signed the marital settlement agreement, regardless of whether he’s an attorney, an accountant, or a litigant of some other profession.”

The trial court added that it found “controlling and instructive” *Larsen v. O’Donnell*, 361 Ill. App. 3d 388 (2005), commenting that Ripani had “testified under oath at the prove-up that he understood the terms of the marital settlement agreement” and so he could not prove that

Kenny's advice to him had caused him any damages. The trial court concluded by stating that Ripani was judicially estopped and that "there simply [was] no factual dispute." For all of these reasons, it granted summary judgment in favor of KMM and Kenny on Ripani's counterclaim.

¶ 29 Shortly after issuing this ruling, Judge Hollis Webster, the judge who had presided over KMM's case seeking to recover their fees and Ripani's counterclaim, retired. Ripani filed a motion to reconsider, arguing that the trial court had improperly applied judicial estoppel under existing Illinois law. The motion was heard by Judge John Elsner, who denied it. In issuing the ruling, Judge Elsner commented that his decision was based not only upon Judge Webster's stated reasons for granting summary judgment but also on the principle that Ripani could not prove that Kenny's advice had caused him any damages if, as Judge Davenport found, there had been no substantial change in circumstances. Ripani then filed this appeal.

¶ 30 ANALYSIS

¶ 31 On appeal, Ripani argues that the trial court erred in (1) denying his motion for leave to amend his countercomplaint to add a claim for negligent infliction of emotional distress, and (2) granting KMM's motion for summary judgment. We begin with the first issue.

¶ 32 Denial of Leave to Amend

¶ 33 The right to amend a complaint or countercomplaint is not absolute, but is a matter within the trial court's discretion. *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 748 (2009). Accordingly, we will not reverse the trial court's decision absent an abuse of that discretion. *Id.* at 749. Generally, a trial court should exercise its discretion liberally in favor of allowing amendments to pleadings if doing so will further the ends of justice. *Id.* at 748. In deciding whether to permit amendment, the trial court should consider the four factors adopted in *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992): (1) whether the proposed amendment would cure the deficiencies in the original pleading; (2) whether other

parties would be prejudiced or surprised by the proposed amendment; (3) whether the amendment is timely; and (4) whether the party seeking to amend had previous opportunities to do so. *Id.*

¶ 34 In this case, Ripani has not established that the trial court abused its discretion in denying his request to amend his countercomplaint to add a new count. The new count Ripani wished to add raised an entirely new claim and theory of recovery, which would have required substantial additional discovery (thereby prejudicing KMM) and perhaps requiring the trial date to be reset. In addition, there was no reason for Ripani to have waited three years before attempting to assert the claim. Although he argues that his emotional distress increased daily, the record reflects that (1) he had expressed feelings of emotional distress from the time KMM first filed its action to recover the fees owed to it, and (2) from the beginning, he blamed KMM for causing that emotional distress. Accordingly, we find no abuse of discretion in the trial court's determination that Ripani had ample opportunity to have asserted a claim for emotional distress earlier, or in its decision to deny his motion for leave to amend his countercomplaint.

¶ 35 Ripani relies upon *Schwaner v. Belvidere Medical Building Partnership*, 155 Ill. App. 3d 976 (1987), to support his argument that he should have been allowed to amend. However, that case is distinguishable because there the proposed amendment merely "expanded the factual basis" for a previously-asserted legal theory. *Id.* at 989. Thus, it was more in the nature of an amendment to conform the pleadings to the the evidence already adduced. Here, by contrast, the proposed amendment asserted a new legal theory and would have required additional discovery. Thus, under *Loyola*, the trial court did not abuse its discretion in denying leave to amend. We therefore turn to the second issue on appeal, the grant of summary judgment in favor of KMM and Kenny on the countercomplaint.

¶ 36

Summary Judgment

¶ 37 A motion for summary judgment is properly granted where the pleadings, depositions, admissions, and affidavits establish that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012); *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 546 (2006). “In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent.” *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). A triable issue precluding summary judgment exists where material facts are disputed or where the material facts are undisputed but reasonable persons might draw different inferences from the undisputed facts. *Id.*

¶ 38 Before commencing our review of the trial court’s judgment, we pause to note that, although Ripani’s amended counterclaim contained allegations of legal malpractice related to maintenance and the parties’ rights regarding the marital residence, the parties’ arguments during the summary judgment proceedings focused entirely on Kenny’s advice about Ripani’s child support obligations. At no point did Ripani argue that factual issues with respect to Kenny’s advice on the other subjects should prevent the entry of summary judgment on his claims. Similarly, on appeal, both parties’ arguments focus solely on Kenny’s advice with respect to child support. Accordingly, we find that Ripani has forfeited any claim of error with respect to the entry of summary judgment on the allegations relating to Kenny’s advice on issues other than child support.

¶ 39 The trial court granted summary judgment for KMM and Kenny on two bases: judicial estoppel and the absence of any issue of material fact. The existence of either one of these bases would be sufficient for us to affirm. *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 192 (2007) (“a reviewing court can uphold the decision of the circuit court on any grounds which are called for by the record”).

¶ 40 We affirm on the basis that Ripani has not shown that there is any genuine issue of material fact that would preclude the entry of summary judgment. In his countercomplaint, Ripani alleged that KMM and Kenny failed to advise him that the provisions of the MSA would require him to pay child support on his imputed (rather than his actual) income and thus he could end up paying more than 28% of his actual income in child support. However, it is undisputed that Ripani knew this at the time he signed the MSA. The MSA (which he had reviewed) stated explicitly that Ripani was agreeing to pay \$1,873 per month in child support and that that amount was based upon 28% of his net imputed income. Ripani knew that his imputed income was far above his actual income but, as he asserted in his petition to modify child support, he and Kristin both expected that he would be able to find employment at a salary that matched his former earnings. Nor is there any suggestion of coercion or duress; to the contrary, while signing the agreement, the parties inserted a handwritten provision into the MSA to address an omitted term, and the trial court stopped the prove-up to allow the parties to confer when Ripani raised a question about another provision. The emails submitted by Ripani show unequivocally that he had repeatedly read and considered the terms of the MSA, and that he did not wish to go to trial and instead wished to settle, even if some of the terms of the MSA were unfavorable.

¶ 41 Further, Ripani has failed to present any evidence to support his implied contention that Kenny and KMM led him to believe that his child support obligation would automatically adjust to 28% of his net income, whatever that might be. To the contrary, the emails show that Kenny advised Ripani that, in order to modify his child support obligation, he would have to file a petition to modify with the court. Ripani emphasizes that Kenny told him repeatedly that his child support obligation was “ALWAYS modifiable, by statute,” and thus he was unprepared for Judge Davenport’s denial of his petition to modify. However, the word “modifiable” means “able to be modified,” not “certain to be modified,” and thus Ripani cannot rely on this statement

to establish that Kenny misrepresented the law of child support. Ripani also concedes that, prior to his execution of the MSA, Kenny clarified that a substantial change in circumstances would have to be shown in order to modify child support. Ripani argues that he did not understand that term. Again, however, Ripani's alleged failure to understand Kenny's correct legal advice does not demonstrate any legal malpractice on Kenny's part.

¶ 42 Ripani's final allegation of malpractice related to child support is that Kenny and KMM did not advise him that he could be subjected to civil or criminal penalties if he did not pay monthly child support of \$1,873. Even a layman, however, may be presumed to know that disobeying a court order may carry the risk of punishment, and this presumption is far stronger for Ripani, a lawyer (and litigator) himself. *Doe v. Lake Forest Montessori School of Lake Forest*, 287 Ill. App. 3d 289, 295 (1997) ("Members of the bar and others appearing before a tribunal are presumed to be aware of the rules of practice and procedure prescribed by the Illinois Supreme Court").

¶ 43 Before closing we pause to note that, on appeal, Ripani raised arguments relating to Judge Elsner's finding (in the context of ruling on the motion for reconsideration) that Judge Webster's grant of summary judgment could be upheld on the alternate ground that if Judge Davenport were correct and there was no substantial change in circumstances, Ripani had not suffered any damages from Kenny's alleged poor advice. Ripani argues that he did suffer damages, because he would not have entered into the MSA if he had known that "his child support would have been non-modifiable," and that Kenny and KMM "completely failed to recognize that this provision, as written, would prevent him from modifying his child support under the applicable law that required a substantial change in circumstances." However, he does not identify any way in which the child support provision in the MSA made his child support non-modifiable or otherwise impaired his ability to bring a successful motion to modify.

¶ 44 Certainly, the provision did not state that Ripani's child support obligation was non-modifiable. To the extent that Ripani is arguing that basing child support on a higher imputed income somehow made it more difficult to modify the child support in the future, that is simply incorrect. We are unaware of any law or commentary supporting such an assertion, and Ripani has not cited any. The only support Ripani provides for his assertion is Judge Davenport's eventual denial of his petition to modify, but she never stated that her denial was based in any way on the language of the MSA. (Rather, it appears that her denial was based upon comparing Ripani's actual income at the time of the MSA (zero) and his later income (\$73,000) when considering whether there had been a substantial change in circumstances, instead of comparing the income on which the child support in the MSA was based (\$120,000) versus the later income.) Ripani does not identify, nor can we discern, anything about the way the MSA provision was written that led Judge Davenport to this comparison. Indeed, the MSA provision's reference to imputed income if anything should have made it clearer that child support was being set artificially high at the outset and would likely need to be modified in the future.

¶ 45 Ultimately, we need not resolve whether or not Ripani indeed sustained damages from Kenny's advice, as this was an alternate basis potentially supporting summary judgment and we have already found that summary judgment was warranted on other grounds.

¶ 46 Because the evidence in the record affirmatively refutes Ripani's counterclaims, and because he has failed to put forward evidence demonstrating a genuine issue of material fact as to any of those claims, we find that the trial court did not err in granting summary judgment in favor of KMM and Kenny. *Gaylor*, 363 Ill. App. 3d at 546. As we affirm the grant of summary judgment on this basis, we need not reach the parties' arguments relating to judicial estoppel and damages.

¶ 47

CONCLUSION

¶ 48 For all of the foregoing reasons, we affirm the order of the circuit court of Du Page County denying Ripani leave to amend his countercomplaint to add a claim for negligent infliction of emotional distress, and affirm the judgment of that court granting summary judgment in favor of KMM and Kenny on that countercomplaint.

¶ 49 Affirmed.