2019 IL App (2d) 180610-U
No. 2-18-0610
Order filed May 13, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS and THE CITY OF ELGIN,	)	Appeal from the Circuit Court of Kane County.
Plaintiffs-Appellees,	)	
v.	)	No. 10-CH-4151
LATIN KINGS STREET GANG,	)	
Defendant,	)	
(Elias Juarez, Saul Juarez, Oscar Sanchez, Ruben Sanchez, Defendants-Appellants).	)	Honorable David R. Akemann, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court: (1) properly rejected defendants RFRA counterclaims/affirmative defenses; and (2) did not err in denying sanctions under Rule 137; but (3) erred in denying, under Rule 219 (for violations of Rule 213), sanctions against the State, without first holding a hearing on when the City of Elgin and, separately, the State knew or should have known of the purging of defendants' names from the police gang roster. Affirmed in part, reversed in part, and cause remanded.

¶ 2 In 2010, plaintiffs, the State and the City of Elgin (the State), sought to enjoin defendants, Elias Juarez, Saul Juarez, Oscar Sanchez, and Ruben Sanchez, from involvement in illegal street-

gang activity, alleging that they were gang members. Following a bench trial, the trial court denied the State's request and further denied defendants' motion to amend their answer, to conform to the evidence at trial, to re-assert their counterclaims that, as a result of the lawsuit, their religious freedom was chilled, in violation of the Religious Freedom Restoration Act (RFRA) (775 ILCS 35/1 *et seq.* (West 2016)). Defendants appeal, arguing that the trial court erred in assessing their RFRA argument and in denying their request for discovery (Ill. S. Ct. R. 219(c) (eff. July 1, 2002)) and continuing-duty-of-inquiry (Ill. S. Ct. R. 137 (eff. July 1, 2013)) sanctions. We affirm both the RFRA the Rule 137 sanctions rulings, but we reverse the court's findings concerning Rule 219(c) sanctions and remand the cause for a hearing on whether there was an Illinois Supreme Court Rule 213(i) (eff. Jan. 1, 2018) violation warranting such sanctions.

¶ 3 I. BACKGROUND

¶ 4 On September 8, 2010, the State filed a civil complaint under the Illinois Streetgang Terrorism Omnibus Prevention Act (Act) (740 ILCS 147/1 *et seq.* (West 2010)), which targeted about 79 named, and all unnamed, individuals who were members of the Latin Kings street gang. The complaint sought to hold members of the gang, including defendants, accountable for monetary damages and enjoin its members from further gang activity, including meeting or appearing with, or meeting anywhere in public view with, the Latin Kings or with a member of any other street gang.

¶ 5 The Act defines a "Streetgang member" or "gang member" as "any person who *actually and in fact belongs to a gang*, and any person who knowingly acts in the capacity of an agent for or accessory to, or is legally accountable for, or voluntarily associates himself with a course or pattern of gang-related criminal activity, whether in a preparatory, executory, or cover-up phase

of any activity, or who knowingly performs, aids, or abets any such activity." (Emphasis added.) 740 ILCS 147/10 (West 2016).

¶ 6 On August 25, 2011, defendants moved to dismiss the State's complaint and sought attorney fees and costs. 735 ILCS 5/2-619 (West 2010); 775 ILCS 35/20 (West 2010). They asserted that the State's allegation that they were Latin Kings members was conclusory and unsupported by specific factual allegations. They contended that they were not members of the Latin Kings. Defendants further asserted that, by filing the complaint, the State substantially burdened their exercise of religion (where they felt called to minister to Latin Kings to leave the gang), including the pressure to sign an agreed order (presented by the State) and the expenditure of time to hire counsel and appear at court hearings.

¶ 7 The State, in response, offered Officer Thomas Wolek's affidavits (dated November 7, 2011). Wolek averred that he was a gang crimes detective for the Elgin Police Department and concluded that, based on several factors, defendants were members of the Latin Kings street gang. As to Oscar Sanchez and Ruben Sanchez, the factors included their self admissions as to their gang membership; criminal investigations involving these defendants; various police contacts with them; and observations of these defendants that involved gang colors, gang signs, and gang associations. As to Elias Juarez, Wolek averred that the factors included his self admission; criminal investigations; various police contacts with him, and observations of him. Finally, as to Saul Juarez, Wolek averred that the factors included his self admission; various police contacts with him; and observations of the defendant involving gang colors, gang signs, and gang associations.

¶ 8 On January 20, 2012, the trial court (Judge Thomas E. Mueller) denied defendants' motion to dismiss themselves as defendants. It found that defendants' denials were not

affirmative matter for section 2-619(a)(9) purposes, but merely denials of the complaint allegations. Their argument, the court noted, should be presented in a summary judgment motion, but it could not treat it as a summary judgment motion because Wolek's affidavit, which contradicted defendants' affidavits, presented a genuine material factual issue, the court further found. Turning to the RFRA issue and attorney fees and costs, the court stated, "That's premature because they're not burdened by anything at this point. There are allegations. There's a prayer for relief. The Court hasn't granted any of that. So I hope—I was hoping they would be here today. They're not. But Counsel can certainly pass on to the Juarezes and the Sanchezes that they're not subject to any court orders out of this case." The trial court further noted that no injunction had entered and "there is no order that would prevent them from converting, proselytizing, preaching to members of street gangs, nonmembers of street gangs, people in Kane County Elgin, people outside of Kane County Elgin. There are no restrictions. So at this point there's been no burden."

¶ 9 On February 10, 2012, defendants filed an answer to the complaint, asserting that they were not "actually and in fact" gang members and raising affirmative defenses and counterclaims, including, as relevant here, based on RFRA. As to their assertion that they were not gang members, defendants claimed that they had either left the Latin Kings (*i.e.*, Elias Juarez on August 19, 2008; Oscar Sanchez in December 2009; and Reuben Sanchez in August 2008) or had never been a member (*i.e.*, Saul Juarez). None of the defendants, they asserted, were Latin Kings on or after the filing of the State's complaint on September 8, 2010. Defendants further maintained that they were born-again Christians and that communications they had with gang members were for the purpose of sharing the Christian Gospel. They feared that the State would use their contacts with gang members (to speak about Jesus) against them in this case. As a

result, defendants, who all resided in Elgin, had restricted or eliminated "their communications about Jesus to members of the Latin Kings in Elgin." The chilling of the free exercise of their religion, they argued, constituted a substantial burden under RFRA and, because they were no longer gang members, the State could not have a compelling governmental interest, narrowly tailored, in chilling the free exercise of their religion. They sought dismissal of the State's complaint, along with damages, attorney fees, and costs.

¶ 10 Defendants also asserted a violation of Illinois Supreme Court Rule 137 (eff. July 1, 2013), which provides that a party may be sanctioned for filing pleadings that are interposed for an improper purpose, such as to harass or to cause unnecessary delay or needlessly increase the cost of litigation. They argued that, at the time of filing of the State's complaint, the State possessed no material evidence that any of the defendants were Latin Kings.

¶ 11 Defendants attached affidavits to their answer. In his affidavit, Elias averred that he was born and raised in Elgin and joined the Latin Kings street gang in 2002 "because it was a normal way of life in Elgin." Between 2007 and 2008, his brother, Saul, began to witness to Elias about Jesus Christ and salvation. On July 20, 2008, Elias began weeping and felt compelled to go to church. There, he gave his life to Christ. To leave the Latin Kings, one had to either sustain a beating or pay a fine. On August 19, 2008, Elias underwent a two-minute beating by nine men to leave the gang. Afterwards, he felt a heavy weight lift off of his shoulders. Ruben drove Elias home, and Elias began to minister to him on how his life had changed and how Ruben's life could change as well. For the next nine months, Elias texted Ruben, Oscar, and other active gang members, sending them scripture quotes and letting them know that Jesus loved them and that they did not have to continue their lifestyle. One day, Ruben contacted Elias, and they

prayed. Ruben went to church and gave his life to Christ. Elias knows that his calling is to lead gang members out of darkness and into the light.

¶ 12 Oscar averred that he was born and raised in Elgin and joined the Latin Kings in 2003 because, during his teenage years, gang life was the only life and it was part of Elgin's culture. He eventually noticed a change in Saul, Elias, and Ruben. In December 2009, Oscar's family was living in a hotel and he "felt less than a man." He felt unwanted and depressed and thought about how happy Saul, Elias, and Ruben were since they gave their lives to Christ. Oscar averred that the Lord began to minister to his heart about being a better father and working on relationships. He knew that he had to leave the gang. Oscar walked into the room, took the beating, and felt like a big weight was lifted. He averred that, although the gang cuts one off upon leaving, he began witnessing to them. He believes that ministering to gang members and leading them to Christ "is a mandate of my life."

¶ 13 In his affidavit, Ruben averred that he was born and raised in Elgin and joined the Latin Kings on July 6, 2008. His brother, neighbors, and schoolmates were involved in the gang, and, thus, he also joined. Initially, Ruben ignored Elias's overtures for nine months. Then, after one bad day, he went to church with Elias on May 1, 2009. "[T]he music began to minister to me." The pastor approached and began to prophesize to Ruben, and his words "were like a sword." Ruben cried uncontrollably. An elder approached and prayed over Ruben in tongues. Ruben felt something happening to him and "felt air blow into my lungs." Afterwards, he could breathe with no pain. He went to a gang meeting to take his beating. There, he tried to minister to the members, but they told him to leave and that they were not going to beat him or require that he pay a fine. "I know that God has called me to minister to gang members and help them to be delivered and set free."

¶ 14 Finally, Saul averred in his affidavit that he was born and raised in Elgin and was never a member of any street gang. He was pressured to join the Latin Kings, but his brother, Martin Juarez, who had been a gang member and served prison time before committing suicide, convinced him not to join. One Sunday in 2007, Saul's mother convinced Saul to attend church, and he gave his life to Christ that day. His life changed, he stopped hanging around the same people, and did not drink, smoke, or use illegal drugs. He started witnessing to his brother, Elias, and has spoken to children at schools about gangs and violence. Saul has also continued to witness to gang members to change their lives through Christ or to leave the gang.

¶ 15 Defendants also attached several letters to their answer, including one from Eddie Rivera, the pastor at Christ Redeemer Christian Church in Elgin, who stated that he witnessed Saul's and Elias's conversions and that they have departed from the ways that enslaved them in the past and set a great example for youth in the community. In other letters, parishioners at defendants' churches averred to their devotion to their faith and families.

¶ 16 On March 30, 2012, the State moved to dismiss defendants' affirmative defenses. 735 ILCS 5/615(a), (b), 2-619(a)(9) (West 2012), arguing that, where an injunction had *not yet* been ordered against them, defendants could not be substantially burdened. The State asserted that defendants could freely exercise their religion in any fashion they chose, as long as it was lawful.

¶ 17 On July 11, 2012, the trial court dismissed defendants' affirmative defenses and counterclaims, finding that they were not affirmative defenses or counterclaims, "but that defendants are free to litigate these defenses [the words "and claims" was struck through] on summary judgment and at trial. Defendants may bring a motion under Rule 137."

¶ 18 On September 24, 2012, defendants moved for Rule 137 sanctions against the State, arguing that the State made false allegations of gang membership against defendants and, had it

made reasonable investigations, it would have learned that none of the four defendants were an appropriate defendant in the lawsuit. Defendants sought dismissal of the suit, sanctions, attorney fees, and costs.

¶ 19 Subsequently, the parties conducted discovery and appeared before the trial court on several contested discovery issues. On November 29, 2012, the court granted defendants' renewed motion for sanctions against the State. Specifically, it entered against the City $3,000 in sanctions in the form of attorney fees. Ill. S. Ct. R. 219(c) (eff. July 1, 2002).

¶ 20 On July 29, 2013, defendants moved to reconsider the dismissal of their affirmative defenses and counterclaims, arguing that RFRA applied because both the State and a local government were seeking to enforce the Act against them in a way that prohibited, restricted, narrowed, or burdened their exercise of religion without a compelling governmental interest and/or through the least restrictive means of furthering that governmental interest. Pointing to Wolek's deposition (on March 4, 2013), defendants asserted that it showed that the City considered communication with a gang member as 1 of the 11 criteria it used to determine and classify individuals as current members of the gang. Thus, defendants argued, to avoid being classified as a current gang member and risk losing their defense that was premised on the fact that they were not gang members, defendants' ability to share their faith, speak, and associate with known gang members was clearly chilled. Pre-enforcement (*i.e.*, pre-injunction) fears *are*, they further asserted, well-founded fears that lead to self-censorship. Defendants also asserted that they feared that, each time they spoke about Jesus with a member of the Latin Kings in Elgin or elsewhere in northern Illinois, the State would learn of such activity and attempt to use it against them in this case. They noted that Wolak's deposition testimony reflected that the City considered defendants' presence at a funeral (in July 2010) of a former Latin Kings gang

member (and where other members were in attendance) sufficient to continue classifying defendants as current gang members subject to this type of suit and police attention.

¶ 21 During this time, a new judge (David R. Akemann) was assigned to handle matters in the courtroom where this case was pending. On October 10, 2013, Judge Akemann heard the beginning of argument at a hearing on defendants' motion to reconsider and then transferred review of the motion back to Judge Mueller. On January 6, 2014, Judge Mueller declined to hear the motion, finding that he had made "no specific findings of fact in ruling on [defendants'] motion to dismiss; rather[,] this Court found that the defendants' pleadings did not constitute aff[irmative] defenses and valid counterclaims as a matter of law. Therefore, this Court respectfully declines to hear the Motion to Reconsider and the file and this particular Motion shall remain before Judge Akemann in Chancery Court." Similarly, on February 18, 2014, Judge Akemann declined to hear or otherwise reconsider Judge Mueller's ruling and declined to set defendants' motion to reconsider for hearing.

¶ 22 On November 13, 2014, defendants moved for summary judgment, arguing that: the evidence showed that they were not gang members on or after September 8, 2010; injunctive relief was not available against any of the defendants because they had not engaged in illegal activity for a substantial period of time; and injunctive relief would violate defendants' civil rights (including, among others, RFRA). In response, the State argued that there was a genuine issue of material fact that defendants were not in the Latin Kings on or after the filing of the complaint; the complaint and prayer for an injunction were not stale; and an injunction would not violate defendants' civil rights.

¶ 23 Defendants attached affidavits to their motion. Elias averred that, after this lawsuit was filed, he was unable to exercise his constitutional and statutory rights to talk about Jesus with

Latin King gang members. Some gang members had injunctions entered against them, requiring that they stay away from other Latin Kings. Because Elias was falsely branded as a Latin King, he felt "hindered and I was discouraged from speaking in public with Latin King gang members." He averred that he feared arrest and being charged with violating the members' injunctions if they were seen with him. Elias stated that, if he was arrested, he believed that it would impact his testimony about Jesus to those to whom he ministered and others. He became reluctant to speak to gang members and stopped doing so. He also feared that, even if no gang members were arrested, his willingness to put them at risk of arrest would "ruin" his testimony about Jesus. As to Latin Kings who did not have injunctions entered against them, he felt hindered and was discouraged from speaking in public with them, for fear that being seen with him would lead to arrest or other actions against that gang member. He stopped speaking to them. Finally, Elias averred that, prior to the suit, he had arranged with Saul to speak with students in Elgin middle schools. However, once he was labeled as a Latin King, the Elgin schools refused to allow him access to their students.

¶ 24 Saul's affidavit was identical to Elias's. Oscar's and Ruben's affidavits also contained the same language, but excluded the portion about speaking in the schools.

¶ 25 On June 19, 2015, the trial court (Judge Akemann) denied defendants' summary judgment motion, finding that there was a factual issue as to whether defendants were in the Latin Kings on or after September 8, 2010. Further, on the RFRA issue, the court noted that it had not issued an injunction in the case. According to the trial court, if, after hearing, it found that the State had proven its case, "then the Court will have an opportunity to consider if injunctive relief is appropriate and the nature of that relief taking into consideration the rights of the parties."

¶ 26 A. Trial

¶ 27 The five-day bench trial commenced on January 10, 2017. Defendants sought to introduce evidence relating to the dismissed RFRA affirmative defenses and counterclaims. The State objected, arguing that Judge Mueller, on July 11, 2012, had dismissed the affirmative defenses and counterclaims and found that they were not affirmative defenses and counterclaims. Defendants responded that that they were not completely dismissed, but that Judge Mueller stated that they could be addressed at trial. On January 11, 2017, the issue was revisited. Judge Akemann stated that he would review the record, but allowed defendants to make an offer of proof by way of testimony on the RFRA issue. On January 13, 2017, the State provided the court with a copy of the report of proceedings from the January 20, 2012, hearing, where defendants' motion to dismiss themselves as defendants was denied and at which Judge Mueller set forth his reasoning on the RFRA issue as to defendants' request for attorney fees and costs (that their argument was premature and that they were not burdened at that point). There was no further discussion or ruling on the issue, but defendants were allowed, during trial, to present offers of proof.

¶ 28 1. Saul Juarez

¶ 29 Saul Juarez, age 30, works as an industrial butcher. He testified that he was never a member of the Latin Kings, but he faced pressure to join. Elias, his brother, was a Latin King. Saul's other brother, Martin, who was in prison, convinced Saul not to join.

¶ 30 Saul was affiliated with the Latin Renegades, a group of friends who grew up together in the neighborhood. The Latin Renegades had no relationship with the Latin Kings. Oscar, Ruben, and Elias were also affiliated with the group. The Latin Renegades were harassed by gangs. It did not have a constitution, manifesto, or rules, as the Latin Kings do. It did have a

hand symbol for the letter R. (Saul identified photographs from around 2000 of himself making the symbol.) Saul testified that he never wore gold and black, the Latin Kings colors.

¶ 31 Saul participated in anti-gang rallies. He also spoke at schools about gangs because he saw the firsthand consequences to his family and friends. His life was in the middle of gang territory in Elgin. In July 2010 (about one month before the complaint was filed in this case), he attended Latin King Oscar Hernandez's funeral to support and preach to the family. Saul knew Miguel Hernandez, Oscar's brother. (Also, Miguel was charged with shooting five-year-old Eric Galarza in 2010.)

¶ 32 Saul identified photographs where he was depicted disrespecting the symbols of other street gangs who bullied the Latin Renegades. Subsequently, when he found out he was going to be a father, Saul disassociated himself from the Renegades. Other members joined various gangs. Identifying People's group exhibit No. 7-G, Saul testified that it depicted him holding a bottle of brandy and wearing gold and black and a Pittsburgh Pirates hat that was "kind of" tilted to the left (indicative of the Latin Kings). The Latin Renegades, he stated, never planned criminal activities. The Latin Renegades last met around 2003.

¶ 33 Saul accepted Christ after his brother, Martin, committed suicide in prison. His mother walked in on Saul crying one day and suggested he go to church with her. He went to church, heard personal testimonies, and it hit home. Saul recited a prayer with the preacher, wherein he professed his sins and accepted the Lord as his savior. Others in the congregation prayed for him, he felt a presence, and a weight lifted off of his shoulders. After his conversion, Saul stopped drinking and smoking. He talked about Christ everywhere he went. Saul also tried to speak to Elias, his brother, about Christ. He also spoke to Oscar and Ruben about the Gospel.

¶ 34 Addressing his school presentations, Saul testified that the idea came from Elgin police officer Echevarria, who is the son of his church's co-pastor. The officer's brother, Kevin, worked for the city and "opened the door" for Saul and Elias to present at the schools. Saul presented at Ellis and Larsen middle schools to troubled teens. He and Elias spoke about growing up around violence, about Martin's death, Elias's gang experience and its negative impact on his life, and their faith. The meetings occurred around 2009, before the lawsuit was filed. There were about 10 meetings. However, after the suit was filed, the meetings ended. The superintendent (verbally) "shut us out." Saul felt discouraged. He believed that he was making a difference. " I felt like it was a purpose from God and we were making a change in the community." He agreed that nothing restrained him from going to other schools in other communities. Saul chose not to do so.

¶ 35 After the suit was filed, Saul was stopped and harassed by the police "a couple of times." "It created a barrier to be able to freely go out and—and preach the gospel to people that I wanted to go preach it to[.]" "I felt like at any given moment I would go out and I would get harassed by *** officers of the Elgin Police Department." During one occasion, in 2010 or 2011 in Elgin, Saul was pulled over. When he asked the officer why he pulled him over, the officer stated "why are you lying and saying that you're not a member of the Latin Kings, and I told him I never was." The officer chuckled as he said this; Saul interpreted the chuckle as harassment. The officer wrote a ticket for failing to use a turn signal; Saul conceded that he did not use his signal and that the officer was correct to write a ticket for it. But he also was aware that the officer had discretion whether or not to issue a ticket. On another occasion, two police officers followed Saul in an unmarked car from his home to Clock Tower Plaza (in Elgin), about 5 or 10 minutes away. When Saul exited his car, one of the officers walked toward him. Saul looked at

the officer and continued walking into the store. That was the end of the encounter. Saul explained that these incidents made him feel "hounded" and "like I was being followed constantly." He also felt scared. Saul conceded that the second incident was merely an assumption on his part and paranoia. He never went to the police to complain about the two incidents.

¶ 36 In an offer of proof on the RFRA issue, Saul testified that he is paid hourly, earning $17.20 per hour. He had to miss one week of work for the trial.

¶ 37 2. Elias Juarez

¶ 38 Elias Juarez, age 31, testified that he became a Latin King member in 2003. The process involved him being "beat up." He joined the gang because, when he was growing up, everyone was gang-affiliated. "[I]t seemed normal." Elias stated that this brother, Saul, was never a Latin King. Elias was not a leader while in the gang; he took orders from higher-ranking members.

¶ 39 Elias left the gang in August 2008. He had to undergo a beating to leave. Elias had the option of paying money, but he did not choose that option because the gang would use it for guns, drugs, and other things that would not benefit anyone. After he left the gang, Elias no longer associated himself with the Latin Kings in the same way as before. He would not, for example, show up at a party. However, if he ran into members at a store, he would stop and talk to them about God, change, and betterment. Once you leave the gang, he explained, you are not supposed to associate with its members. However, Elias pursued them to try to get members to better themselves. In doing so, he put himself in harm's way.

¶ 40 Between July 20, and August 19, 2008, he was still an active member of the gang, but stopped attending meetings. After he left the Latin Kings, he sent text messages to Oscar and Ruben, who were still members of the gang, with Bible verses to try to motivate them to change

and to walk away from the gang. The Latin Kings "probably didn't know" that Elias was reaching out to its members. Elias texted everyone in his phone book.

¶ 41 The next person to leave the gang was Ruben (who did not undergo a beating) and then Oscar (who "took a beating").

¶ 42 Once all three men left the Latin Kings, they started going to middle schools to reach out to troubled kids, including at Riverwoods Christian Academy. They also participated in anti-gang marches. One march occurred after five-year-old Eric Galarza was shot in Elgin. The person convicted for the crime was a Latin King. Elias testified that the march occurred *after* the complaint was filed in this case. Oscar, Ruben, and Saul participated in the march, as did 200 people in the community.

¶ 43 When asked to identify the Latin King he spoke to when he decided to leave the gang, Elias could not recall his name. Also, he could not recall who was present during the meeting when he was told he could pay a fine to leave. Elias could not recall where his beating occurred or who was present. He thinks that Oscar and Ruben were present, along with over 10 others.

¶ 44 In July 2010, Elias attended the funeral of Oscar Hernandez, a childhood friend and a Latin King who died a gang-related homicide. He knew that there would be Latin Kings at the funeral. Elias attended to pay respects to Oscar and his family. He did not go to the funeral to socialize with Latin Kings, nor did he speak to any Latin Kings. The funeral occurred over one month before the complaint was filed in this case. The Latin Kings members wore "black and gold, black shirts with gold crowns, emblems on their shirts, basically representing Latin Kings with their clothing." Elias did not dress like this. Saul, Ruben, and Oscar were also present, They did not wear gang colors.

¶ 45 After the lawsuit was filed in this case, Elias and his group were (verbally, but he later testified that he could not recall) denied access to the schools by the superintendent of school district U-46, whose name he could not recall, because "they believed that we were gang related again and so they didn't want us in the schools talking to the kids." Before the suit, they had been allowed in the schools (about 10 times, but he could not recall the exact number). The school district knew their criminal backgrounds. The lawsuit's effect on his preaching in the schools has been humiliating.

¶ 46 Because of the lawsuit, Elias has not been able to preach the gospel. "There is times when I still run into gang members from before at the store, at the park, different places, I don't feel comfortable—I don't feel comfortable risking getting locked up or—or getting a fine or any of that because of this lawsuit trying to talk to them[.]" The suit has affected his ability to preach in Elgin.

¶ 47 Elias never had any gang-related tattoos. Elias further testified that he works in Elgin in plastics as a thermal foreman plastics tech. He has worked for his current employer for four years. Elias married in 2008 and has four children. He owns his own home.

¶ 48 While Elias was in the Latin Kings, Saul would speak to him about Jesus. This began around 2007 or 2008. Saul spoke about Bible verses, people's testimonies in church, the way that they changed, and encouraged Elias to try to look for God in order to change his life. He was trying to encourage Elias to get out of the gang. Elias had another brother, Martin, who committed suicide while in a federal prison before Elias left the gang; he was a Latin King. Addressing Saul's conversion, Elias recalled that Saul changed his life. He stopped partying and became a family man. Addressing his own conversion, Elias testified that, in July 2008, he was home one day, composing music, and he started crying and breaking down. "When I stopped I

felt the urge to go to the service that [Saul] told me to go to, and I ended up going." Saul attended the Charismatic Church Door of Sion. Elias went to the church, heard the message about forgiveness and change, and he accepted Christ. He changed his life and left everything in order to be a better person. When he went to the church, he "[s]tarted feeling things that I never felt before." Elias was baptized in 2009. The baptism signifies "washing away of our sins and a new beginning. Being born again."

¶ 49 After he was beaten out of the gang, Elias believed God was calling him to minister or witness to Latin King gang members. His calling was gang outreach. During his beating, Elias blacked out a couple of times because he took many hits to his head. "I could barely walk." He had bruises "everywhere." Sometime after his beating, Elias tried to share his faith with Ruben. He pursued him for nine months. Ruben gave his life to Jesus in 2009.

¶ 50 Addressing five-year-old Eric Galarza, who was shot, Elias testified that he helped organize an anti-gang rally in Elgin in response to the shooting. The person convicted for the death was a Latin King, and the boy's father was a Latin King at one point. Saul and Ruben participated, but no Latin King gang members participated in the rally. Elias spoke to the media about the rally, and police were present.

¶ 51 Elias further testified that, sometimes, Latin Kings do not wear gang colors, such as to hide from police. You could be a Latin King and not have a tattoo. Elias could not recall if he sent gospel-related text messages to gang members after this lawsuit was filed.

¶ 52 In an offer of proof on the RFRA issue, Elias testified that he left the gang in 2008 and the present suit was filed in September 2010. He earns $21.30 per hour. The suit has required Elias to attend court proceedings, take time off of work (he did not keep track of the time), and prevented him from giving testimony to people, including at U-46 schools, and reaching out to

them. Also, "[p]eople [are] looking at me the same again as before." He feels discouraged. The superintendent informed Elias and his friends that they were not allowed to speak to the students while the lawsuit was pending. "I was prevented from talking to the people I was trying to reach out to because of the lawsuit, the people that I used to be with which were the easiest people for me to reach out to." It was not the court or the Elgin Police Department that ordered him not to speak out. Elias feared arrest if he spoke to others. "If I try to reach out to somebody to give my testimony, try to reach out to them so that they could step away from that lifestyle and a police officer's driving by and he sees them and they're part of—of the lawsuit then they could be arrested." "Elgin is where we're from, this is a—that's our home. It's easier for me to try to reach out to the kids there because I know where they come from, I know where they're at."

¶ 53 3. Ruben Sanchez

¶ 54 Ruben Sanchez, age 29, testified that he lives in Elgin and is married and has two children. He joined the Latin Kings in July 2007 or 2008. He did not have to take a beating or pay any money to join because he has had three collapsed lung episodes and gang members were afraid to beat him. He joined the gang because he wanted to follow his brother's, Oscar's, path and because other middle school and high school students were in the gang, "so I decided to do it as well." While in the gang, Ruben primarily partied, including smoking marijuana, going to parties, drinking, disturbing the peace, and hanging out.

¶ 55 For nine months prior to May 2009, through text messages and phone calls, Elias had been inviting Ruben to go to church, but Ruben had ignored him. However, on May 1, 2009, Ruben was having a bad day and attended church with Elias. He also wanted Elias to stop asking him to attend church. During the service, however, Ruben felt the presence of God, which changed his life. Ruben cried during the service and was comforted by the preacher. He

felt the chains of the gang lifted off of him, and he was able to breathe again. Ruben wanted to live for God.

¶ 56 On May 3, 2009, Ruben left the Latin Kings. He raised his hand at a meeting that day and announced that he wanted out of the gang. They told him to go. Ruben started to talk about Jesus, but they cut him off. Oscar told him to go. Ruben could not recall who else was present. The meeting occurred outdoors at a park. After Ruben left the gang, others left, including Oscar. His former gang unit has only six members. After he left the gang, Ruben did not go to the Elgin Police Department to inform them that he left the gang.

¶ 57 Initially after he left the gang, Ruben did not communicate with Latin Kings members. Once God opened his eyes and he started reading the Bible, Ruben believed that he had to reach out to them.

¶ 58 Ruben attended Hernandez's funeral in July 2010. He understood that going to the funeral could be dangerous because gang members were present and there could have been retaliation. He saw "lots" of police officers there. Ruben did not speak to any Latin Kings.

¶ 59 Ruben was baptized in August 2009. Ruben testified that he attended a few anti-gang events. One was at the Gail Borden Library. Sergeant Lullo was present from the Elgin Police Department; Ruben did not speak to him. At the event, Ruben gave brief testimony on how he left the gang and went to Jesus. Ruben also participated in the march for Galarza that was organized by Oscar and Elias. There was media attention given to the event, including several news reporters. He did not speak to the media. This rally occurred after the lawsuit. Ruben did not feel chilled at this time.

¶ 60 Ruben (and Oscar and Elias) wanted to reach out to Latin Kings and other gang members. Ruben had once been arrested for street gang contact and feared that if he was caught with a

gang member, he "would be in trouble again with—you know, with the police and with the lawsuit." After this lawsuit was filed, he understood that he was not to associate with gang members or be seen with them in public.

¶ 61 Addressing his ministry, Ruben testified that he has held Bible studies at his home, attended other churches to speak about his testimony, and evangelized in high crime areas. He also ministered to Oscar.

¶ 62 During an offer of proof on the RFRA issue, Ruben testified that he is paid on an hourly basis, earning $18.10 per hour. He works full-time as an assistant supervisor at Flinn Scientific in Batavia. Ruben has worked there for six years. When he started there, he earned less money per hour. He took unpaid time off of work to attend court during the trial. Addressing the lawsuit, Ruben stated that the Elgin Police Department held an anti-gang awareness event and Officer Echevarria approached Ruben to attend the event. However, police personnel pulled him aside and told him that, due to the suit, he could not attend the event. Ruben felt devastated and discouraged. The lawsuit instilled fear in Ruben if he was seen with gang members. However, he attended Hernandez's funeral and he drove Elias home after his beating. Ruben did not speak at any middle schools. Saul and Elias did so.

¶ 63 4. Oscar Sanchez

¶ 64 Oscar Sanchez, age 30, testified that he became a Latin King in 2003 after a two-minute beating. He recalled Elias becoming a member on the same day. Oscar joined the gang before his brother, Ruben. Saul was not a Latin King.

¶ 65 Oscar testified that he joined the gang because his cousin was in a gang and "gang life was all around me." Oscar left the Latin Kings in December 2009 after a two-minute beating. The beating occurred in Elgin, but he could not recall the location or who was present. It

occurred during a scheduled gang meeting, outdoors (his affidavit statement that it was in a room was incorrect), and in the evening to discuss "Nation business." Over 10 members were present. When Elias left the gang, Oscar was upset, because he was his best friend and felt that Elias turned his back on him. Latin Kings are not supposed to associate with persons who were not Latin Kings.

¶ 66 Prior to his leaving the gang, Oscar's family lived in a hotel, and he felt bad for not providing for them because he was spending his money on other things. His family was not his priority during his time in the gang. The gang was his family. Prior to leaving, Elias had talked to him about Jesus. Oscar fought with his girlfriend and had many emotions. He cried and decided to seek God. He prayed and started going to church with Elias, Saul, and Ruben. On the day he left the gang, he did not have any fear. Afterwards, he cried because he felt relieved. Once he left the Latin Kings, Oscar felt a weight lifted off of his shoulders. Oscar believed that, after he gave his life to Jesus, it was his religious calling to reach out to Latin King gang members.

¶ 67 Oscar has a lion tattoo, which is the Latin Kings' logo. He explained that he wanted to remove it, but did not want to go through the pain and, speaking to someone about it, he was advised that the tattoo did not define him. He decided to keep it, continue his life, and be the best person he can be. "[W]hether they see the tattoo or not that's completely on them."

¶ 68 Oscar was the timekeeper during Elias's beating to leave the gang. Ruben was also present, as were several other members. It occurred outdoors in Elgin in a forest preserve or similar area (during his deposition, he could not recall the location). Ruben, he explained, was allowed to walk away from the Latin Kings without a beating. Oscar pleaded with the other members to allow him to walk away, which they did.

¶ 69 Oscar attended the Hernandez funeral to show respect for the family and to share his faith with them. He did not wear black and gold.

¶ 70 Addressing how he shared his faith with others, Oscar testified that he did so in various ways, including phone conversations and speaking in person when running into someone. He has reached out to Latin King gang members to encourage them to leave the gang and follow Jesus. He started this a few days after he received his beating. He has held a Bible study at his home and invited non-believers to attend. Further, Oscar organized a small outreach program to reach out to other youth. He also spoke at his church. Oscar did not speak at local schools.

¶ 71 Oscar is married and has one child. He has his GED and works in construction. He and his family now live in Georgia. In 2010, Oscar worked at Elgin Industries as a forklift operator. He left in 2013, and went to work at Fisher Nut.

¶ 72 Oscar further testified that he told Elgin police that he was not in the gang. This occurred when he was pulled over by a detective who was seeking information about a murder. Oscar could not recall the date this occurred. Oscar informed the detective that he was not a Latin King.

¶ 73 During an offer of proof on the RFRA issue, Oscar stated that he is paid hourly, earning $11 per hour. He did not move to Georgia because of the lawsuit; he moved there to be with his son. At Fisher Nut, he had earned $16 per hour. During the week of trial, he had to take time off of work, go without pay, and purchase airline tickets (for $404). The suit has affected his ministry by preventing him from sharing with faith. "I felt like I wasn't allowed to *** communicate my faith to *** Latin Kings if I were to meet them[.] *** I was always worried about if [the Elgin police] would come by and maybe see us and *** it might affect this case, or *** if they signed *** the injunction[.]" Up until this suit was filed, Oscar was trying to reach

out to gang members. Once the suit was filed, Oscar was afraid and uncomfortable talking to other Latin Kings because he did not want anything to happen to him with this case. He was not certain what the Elgin Police Department would "think if they did see me, you know, talk to any of these Latin King gang members." Oscar agreed that he was able to communicate his faith without any involvement or restraint from the Elgin Police Department other than the fact that "this case was still open and *** if I were to communicate or *** run into someone that was a Latin King and talk to them and *** the gang unit would show up, randomly, *** I felt *** it wasn't a good idea at that time *** because of this case." Nothing prevented Oscar from communicating his faith to Latin Kings in a different county or city. There were times when he wanted to reach out to gang members through Facebook to get together so he could share his faith with them, but felt that he could not do so because of the lawsuit. This was an inconvenience; no one told him that he could not do so.

¶ 74 5. Officer Tom Wolek

¶ 75 Elgin Police Officer Tom Wolek testified as an expert in street gangs. His responsibilities include gathering gang intelligence and identifying street gang members, while also ensuring that he does not misidentify anyone.

¶ 76 Wolek testified that the City of Elgin uses 11 criteria, under a totality-of-the-circumstances analysis, to identify potential gang members: (1) self admission; (2) information provided by a confidential informant of reliability; (3) information from a confidential informant of untested reliability; (4) gang tattoos; (5) gang signs; (6) gang graffiti; (7) wearing gang colors (black and gold for the Latin Kings); (8) appearance on gang documents; (9) arrest in the company of other gang members; (10) communication with known gang members; and (11)

strong indicators of a relationship with gang members (*e.g.*, familial relationship). Generally, if three criteria are met, an individual is listed as a gang member.

¶ 77 Wolek further testified that he currently (*i.e.*, as of March 2013) considered defendants *inactive* Latin Kings members. However, when the State's complaint was filed (September 8, 2010), he considered them members of the Latin Kings.

¶ 78 The City has a process by which it removes individuals from being identified as gang members. If, within a two-year active status, there is no activity showing that sufficient criteria are met, the person will be deemed inactive. Once the individual is inactive for two years (and assuming no activity met any of the 11 criteria), they will be purged from the gang list. Department personnel review the list at least once per calendar year.

¶ 79 According to Wolek, as of 2017, defendants have been purged from the gang list "for some time now," specifically, sometime between 2013 and 2014. In 2011, they were still listed as active because, in July 2010, they had attended Hernandez's funeral. This was the *only* act in 2010 that reflected they were gang members. Also, the self-admissions in defendants' 2012 affidavits, according to Wolek, corroborated information that the police that had they were gang members at certain times. As of August 15, 2012, however, defendants were listed as inactive on the City's gang roster. At his deposition in March 2013, Wolek testified that defendants were inactive at that time and that there had been no new information on any of the defendants since the time they were put on inactive status.

¶ 80 Wolek explained that inactive status is used for the City's gang unit's purposes to reflect that they had not seen activity in a two-year period and that the person might be getting out of the gang. Wolek further testified that inactive status means that the 11 criteria are not present. "We don't see them being—communicating, arrested with other gang members. If they do get

arrested we haven't identified any new tattoos. We don't have photographs of them using gang hand signs or wearing gang colors."

¶ 81 Wolek recalled an anti-violence rally after the Galarza homicide. He was unaware who organized the rally. The homicide occurred in October 2010. Wolek has given anti-gang presentations at the Gail Borden Library. He was unaware of Ruben speaking with Sergeant Lullo at the library about gangs. Wolek was also unaware of any of the defendants being on television.

¶ 82 According to Wolek, Elias's claim that he left the gang and tried to lead Ruben out might have put his life at risk.

¶ 83 The current roster of identified Latin Kings contains about 120 individuals. One of the gang's manifestos is, "Once a King, always a King." They try to strictly enforce this. Although one can leave the gang by sustaining a beating or paying a fine, that person can still face harm from the gang. Once someone leaves the Latin Kings, the remaining members are to shun the former member. Defendants' presence at the Hernandez funeral reflects, in Wolek's view, that they were not shunned by the Latin Kings. They attended a funeral with other Latin Kings for a Latin King. At the funeral, about five or six Latin Kings wore gang colors. He agreed that defendants did not wear colors.

¶ 84 Wolek did not consider several letters written in support of defendants in forming his opinions. "This doesn't fit our 11 different types of criteria on how we identify street gang members." Wolek considered the Latin Renegades to be a subset of the Latin Kings, based on photographs depicting Saul wearing gang colors, making gang hand signs, and appearing with Latin Kings members.

¶ 85 Wolek found it "highly suspicious" that defendants who recalled the process by which they left the Latin Kings could not recall who was present at the time or where the acts occurred.

¶ 86 B. Additional Matters & Trial Court's Ruling

¶ 87 On May 2, 2017, defendants filed their closing argument, arguing that the court should declare that the State had unlawfully infringed on their civil rights. They sought damages, attorney fees, and costs.

¶ 88 Also on May 2, 2017, defendants moved for sanctions against the State. Ill. S. Ct. R. 137 (eff. Jan. 1, 2018); Ill. S. Ct. R. 219 (eff. July 1, 2002). They argued that the State and its counsel knew that their suit was not well grounded in fact because the City had not considered defendants to be gang members for several years and, as a result of this willful misconduct, defendants' ministry activities were chilled and effectively shut down and they had to take time away from their jobs to clear their names. Further, defendants argued that the State and its counsel failed to comply with their ongoing duty to seasonably supplement their discovery responses by failing to disclose that the State no longer believed that defendants were Latin Kings or with the late date upon which they still believed they were gang members. Had they disclosed this information, defendants argued, defendants would have been entitled to summary judgment years earlier on the State's injunction request. None of the defendants were on the gang roster, they claimed, after August 16, 2014, at the latest. The parties and the court would have been spared all of the time and resources that were wasted over the previous four years and five days of trial.

¶ 89 The trial court issued its order on August 11, 2017, finding that, as of the filing of the complaint and subsequently, defendants were *not* members of the Latin Kings. "It is not enough that the Defendants attended a funeral of a known Latin King without colors or signs. It may be

that part of the Latin Kings creed is once an individual is a member they will always be, but the credible evidence in this case and indeed the view of the expert for the Plaintiff is that conclusion is not always born[e] out in real life." The court denied the State's request for injunctive relief. As to defendants' request for sanctions, the court noted that Judge Mueller had previously found that their motion was premature. The trial court struck it, without prejudice, but noted that any future motion "would need to assert that [the State's] assertions of fact were untrue *and* made without reasonable cause." (Emphasis in original.) Next, the trial court denied defendants' motion to amend their answer to re-assert their RFRA counterclaims to conform to the evidence at trial. It found that "there are no proofs presented in testimony or in the offers of proof that would constitute violations of [defendants'] civil rights by [the State]." The court noted that defendants did not possess a right to enter the public schools to profess their religious faith and that there was no evidence that plaintiffs or any of their officers or agents "ever prevented or attempted to prevent Defendants from professing their faith." Finally, as to defendants' request for damages and attorney fees, the court denied this request because there was no showing of a deprivation by the State of defendants' civil rights.

¶ 90 On October 10, 2017, defendants moved to reconsider the sanctions issue. On January 31, 2018, the trial court denied the motion and found that all claims between the parties were resolved. It noted that the central issue was gang membership as of the date the complaint was filed. "Things that happened subsequently may or may not be relevant to that, and, of course, there was a lot of evidence taken on that subject of activities before and after that date." The court further noted that one of the defendants still had a tattoo as of the hearing date. Thus, it determined that sanctions against the State were not warranted. On June 29, 2018, in an agreed

order on defendants' motion, the court entered an Illinois Supreme Court Rule 304(a) finding. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Defendants appeal.

¶ 91 II. ANALYSIS

¶ 92 A. RFRA Counterclaims/Affirmative Defenses

¶ 93 Defendants first argue that the trial court erred in dismissing their RFRA counterclaims and affirmative defenses and, later, denying their request to amend their answer to include them to conform to the evidence presented at trial. Defendants assert that the State's lawsuit was baseless, chilled and restricted their religious exercise, and constituted a substantial burden on their religious exercise without a compelling governmental interest. For the following reasons, we find defendants' argument unavailing.

¶ 94 Under RFRA, "government may not *substantially* burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest." 775 ILCS 35/15 (West 2018). A RFRA plaintiff must establish, by a preponderance of the evidence, that the complained-of governmental action: (1) substantially burdens; (2) a religious belief, rather than a philosophy or way of life; (3) which belief is sincerely held by the plaintiff. *United States v. Meyers*, 95 F.3d 1475, 1486 (10th Cir. 1996). Once a plaintiff establishes that his or her exercise of religion was substantially burdened, the burden of proof shifts "to the government to demonstrate that the challenged regulation furthers a compelling state interest in the least restrictive manner." *Id.*; 775 ILCS 35/15 (West 2018).

¶ 95 RFRA is similar to other states' religious freedom statutes that "seek to replace a substantially identical federal law [*i.e.*, federal RFRA, 42 U.S.C.A. § 2000bb *et seq.* (2018),] that

was held unconstitutional" as applied to the states. Mary Jean Dolan, *The Constitutional Flaws in the New Illinois Religious Freedom Restoration Act: Why RFRAs Don't Work,* 31 Loy. U. Chi. L.J. 153 (2000). "The purpose of all *** RFRAs is to codify a standard of review for religious freedom claims." *Id.* Further, the Supreme Court has noted that federal RFRA, which contains identical language to Illinois's statute[1], provides greater protection for religious exercise than is available under the First Amendment. *Holt v. Hobbs,* ___ U.S. ___, ___, 135 S. Ct. 853, 859-60 (2015).

¶ 96 RFRA defines the "[e]xercise of religion" to mean "an act or refusal to act that is substantially motivated by religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief." 775 ILCS 35/5 (West 2018).

¶ 97 1. Availability of RFRA During Pendency of Complaint

¶ 98 Preliminarily, the State argues that the proper inquiry here is whether RFRA counterclaims or affirmative defenses were *available* to defendants. It asserts that they were not, and it points to Judge Mueller's January 20, 2012, denial of defendants' motion to dismiss themselves as defendants, wherein, addressing their RFRA counterclaims and affirmative defenses, he found that the RFRA issue was premature and defendants' religious exercise had not been burdened. The State asserts that the fact that the complaint in this case was filed and

[1] Federal RFRA provides that "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless the government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb-1(a), (b) (2018). Thus, federal case law is instructive here.

pending and requested an injunction did not place any burden on defendants' free exercise of their religious rights and did not provide a basis for the availability of RFRA counterclaims and affirmative defenses for defendants. No consequences can actually flow, the State argues, from a prayer for relief without judicial action until a court rules on the issue and enters an order or judgment—in this case the injunction—or other relief. The State posits that, if every defendant could file an affirmative defense, asserting that the filing of an action itself violated their rights, because they disputed the complaint allegations, then every defendant would win before a case was even litigated on the facts. The State also suggests that any monetary judgment awarded to a prevailing party in a civil action would be undercut by a counterclaim based on the filing of the complaint itself, because the defendant could argue that the filing of the complaint caused them to have to hire attorneys, expend attorney fees, kept them from their job, and constrained their behavior and, thus, they are entitled to fees and damages. This analysis, the State urges, leads to an absurd result, because the prevailing party would be punished for filing a lawsuit that it won or would be denied relief if defendant's damages and fees outweighed their own judgment.

¶ 99 Defendants note that they raised RFRA counterclaims and affirmative defenses in their answer to the State's complaint, as the statute permits burdens on religious exercise to be raised as claims or defenses. 775 ILCS 35/20 (West 2018). They alleged that the lawsuit chilled their free exercise of religion, where the State falsely branded them as gang members and sought to enjoin them from any contact with actual gang members, thus, prohibiting them from sharing their faith with them. The trial court, they note, dismissed the counterclaims and affirmative defenses, but allowed them to raise their assertions as defenses on summary judgment and at trial. Defendants did raise them on summary judgment, which the court denied after determining that the RFRA issue was premature, and then at trial in the form of offers of proof. At the

conclusion of trial, defendants sought to amend their answer to include the RFRA counterclaims and affirmative defenses to conform to the evidence presented at trial, but the trial court found that defendants did not provide sufficient proof showing violations of civil rights or that the State "ever prevented or attempted to prevent Defendants from professing their faith." Defendants contend that this finding was erroneous because the State's baseless lawsuit chilled and restricted their religious activities and this constituted a substantial burden.

¶ 100 Section 20 of RFRA allows a person alleging a burdening of their religious exercise to "assert that violation as a *claim or defense* in a judicial proceeding and may obtain appropriate relief against a government," including, if the individual prevails against a government, attorney fees and costs. (Emphasis added.) 775 ILCS 35/20 (West 2018). In *United States v. Christie*, 825 F.3d 1048, 1055 (9th Cir. 2016), the Ninth Circuit, addressing the federal RFRA provision's statement that a statutory right can be raised against the government as either a claim or defense, in other words, "a sword or a shield," noted:

> "If a person has a sufficiently realistic fear that the government is going to punish him for exercising his religious beliefs in defiance of the law, he may unsheathe RFRA and file a preemptive strike in an effort to subdue the government before it treads further. *E.g.*, *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 425-27 (2006) (granting a preliminary injunction under RFRA to a religious sect *threatened with* prosecution for past violations of the CSA); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 735-36 (2014) (enjoining government from requiring full compliance with the Affordable Care Act of claimants who felt compelled to violate its commands for religious reasons). Alternatively, if the government strikes first—for example, by indicting a person for engaging in activities that form a part of his religious exercise but

> are prohibited by law—the person may raise RFRA as a shield in the hopes of beating back the government's charge. *E.g.*, *United States v. Bauer*, 84 F.3d 1549, 1559 (9th Cir. 1996) (vacating convictions so defendants could interpose RFRA as defense to having possessed marijuana in violation of the CSA); see also *Wisconsin v. Yoder*, 406 U.S. 205, 207, 234-35 (1972) (striking down criminal convictions and nullifying state compulsory school-attendance law as applied to religious objectors who invoked First Amendment defense to prosecution). In either scenario, a religious objection may have the effect of immunizing the objector's past conduct from official sanction—even though such conduct violated a law that is otherwise valid—and of nullifying, in whole or in part, his continuing duty to comply with a generally applicable command." (Emphasis added.) *Id.*

See also *Multimedia Holdings Corp. v. Circuit Court of Florida, St. John's County*, 544 U.S. 1301, 1304 (2005) ("A threat of prosecution or criminal contempt against a specific publication raises special First Amendment concerns, for it may chill protected speech much like an injunction against speech by putting that party at an added risk of liability. The court's first order was not accompanied by notice or hearing or any other of the usual safeguards of the judicial process. It bears many of the marks of a prior restraint"); *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 386-87, 392-93 (1988), (plaintiff-booksellers had standing to bring a pre-enforcement First Amendment challenge to a state statute prohibiting the sale to minors (and knowing display) of material deemed harmful to juveniles, because the law was aimed directly at them and because they would have to take significant compliance measures or risk prosecution "if their interpretation of the statute was correct"; "We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will

not be enforced, and we see no reason to assume otherwise. We conclude that plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them. Further, the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution").

¶ 101 Here, we need not decide whether the mere filing of the complaint chilled defendants' religious exercise. We decide the RFRA issue on the substantial burden question, which we turn to next.

¶ 102 2. Substantial Burden

¶ 103 Defendants contend that this lawsuit constituted a substantial burden on their religious exercise. Their activities, they maintain, were impacted by: (1) the shutdown of their ministry to gang members; (2) the State's pursuit of an injunction years after it knew, based on its own records, that defendants were not actually gang members; and (3) police surveillance and a shutdown of defendants' outreach to schools.

¶ 104 Defendants argue that the evidence showed that they felt called by God to minister and evangelize to those who were still involved with gangs and that they detailed their activities in reaching out to gang members. They maintain that the lawsuit affected their religious activities, where they felt scared to meet with gang members to share their faith with them and worried about how such activities would be used against them in the lawsuit. Thus, their ministry and outreach activities were chilled and effectively shut down by the suit. Defendants also note that they had to take time away from their jobs to clear their names, including shouldering their defense costs in this civil case, where they were not entitled to a public defender. They also point to Wolek's testimony concerning the factors that Elgin uses in determining whether an individual is a gang member. Wolek testified that communication with a known gang member

(and even presence at a funeral for a former gang member) is 1 of the 11 criteria the City uses to classify individuals as gang members. Therefore, in order to avoid being classified as a gang member and losing their defense, defendants' ability to share their faith with known gang members was clearly, they assert, chilled. See *Multimedia Holdings Corp.*, 544 U.S. at 1304 (threat of prosecution raises first amendment concerns). Furthermore, defendants argue that the chilling and restriction on their religious activities constituted a substantial burden on their religious exercise, because the suit pressured them to modify their behavior. They all perceived their calling and purpose, as they testified at trial, to minister or witness to Latin Kings gang members. The lawsuit, they argue, forced them to choose between acting on their religious calling or abandoning it in order to avoid threatened penalties or the City's ongoing classification of them as gang members. The imposition of this choice was a substantial burden, in their view, on their religious exercise. They further note that their attendance at a funeral was used to brand them as gang members, even though they testified they attended as part of their ministry. The State, they argue, considered communication with gang members as proof of gang membership; thus, defendants were not free to continue their outreach to gang members and, in order to maintain their defense, their ministries were effectively shut down. Defendants also take issue with the State's contention at trial that they could have evangelized to groups outside of Elgin, asserting that their knowledge of gangs in Elgin and certain Latin Kings gave them a unique understanding of their mission field and that is the field they believed God instructed them to pursue. It is not the State's role, they urge, to tell them where or to whom to minister to.

¶ 105 Moreover, defendants assert that the lawsuit constituted a substantial burden for a second reason: it had no credible basis, even more so after 2013, when the City stopped classifying defendants as gang members. However, they note, the State continued to seek injunctive relief

for an additional four years, even after its records showed that defendants were no longer gang members.

¶ 106 Finally, defendants assert that the police surveillance and the shutdown of defendants' outreach to schools constituted a substantial burden on their religious exercise. One of the ways in which defendants pursued their calling, they note, was outreach to schools. However, after the complaint was filed in this case, the schools shut out defendants. Furthermore, defendants contend that they endured police harassment, surveillance, and traffic stops, with police on at least one occasion rebuking defendants for defending their rights.

¶ 107 The State responds that, even if defendants may assert a RFRA claim, their claim fails because the Act and the injunctive relief available thereunder do not violate RFRA and, if an injunction had issued, the facts do not support finding a RFRA violation. The State contends that defendants failed to provide evidence to support their claim that they were substantially burdened. It points to the anti-violence rally that several defendants attended, which occurred after the complaint in this case was filed, arguing that defendants' evangelizing was not substantially burdened. The State also asserts that defendants acknowledged that their calling to spread their religious message was universal, yet they only wanted to evangelize to Latin Kings and school children. It also notes that defendants admitted that they had previously evangelized through telephone contact and text messages, and, even the threat of an injunction, the State contends, should not have stopped them from evangelizing in those ways.

¶ 108 It is unclear if the question whether a burden is substantial presents a question of law or fact. Compare *Real Alternatives, Inc. v. Secretary Department of Health & Human Services*, 867 F.3d 338, 356 (3rd Cir. 2017) (question of law), with *World Outreach Conference Center v. City*

of Chicago, 591 F.3d 531, 539 (7th Cir. 2009) (factual question). Nevertheless, regardless of the standard of review, our holding is the same.

¶ 109 RFRA does not define what constitutes a substantial burden. "The hallmark of a substantial burden on one's free exercise of religion is the presentation of a coercive choice of either abandoning one's religious convictions or complying with the governmental regulation." *Diggs v. Snyder*, 333 Ill. App. 3d 189, 194-95 (2002) (RFRA case). "To constitute a showing of a substantial burden on religious practice, a plaintiff must demonstrate that the governmental action 'prevents him [or her] from engaging in conduct or having a religious experience that his [or her] faith mandates.' " *Id.* at 195 (quoting *Stefanow v. McFadden*, 103 F.3d 1466, 1471 (9th Cir. 1996)). "Under [federal] RFRA, a 'substantial burden' is imposed only when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit *** or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions[.]" *Navajo Nation v. U.S. Forest Service*, 535 F.3d 1058, 1069-70 (9th Cir. 2008). See also *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972) ("[t]he impact of the compulsory-attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs"); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (where the appellant's declared ineligibility for benefits "force[d] her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand," government's imposition of such choice imposes substantial burden).

¶ 110 However, "there is no substantial burden placed on an individual's free exercise of religion where a law or policy merely operates so as to make the practice of the individual's

religious beliefs more expensive." (Internal quotation marks omitted.) *Goodall by Goodall v. Stafford County School Board*, 60 F.3d 168, 171 (4th Cir. 1995).

¶ 111 Courts "must be careful to conduct only a review into the substantiality of the religious burden and not to question the reasonableness of the religious belief itself." *Real Alternatives, Inc. v. Secretary Department of Health & Human Services*, 867 F.3d 338, 357 (3rd Cir. 2017). "It is enough that the claimant has an 'honest conviction' that what the government is requiring, prohibiting, or pressuring him [or her] to do conflicts with [the individual's] religion. *Korte v. Sebelius*, 735 F.3d 654, 683 (7th Cir. 2013) (citing *Thomas*, 450 U.S. at 716). "[T]he substantial-burden test under RFRA focuses primarily on the 'intensity of the coercion applied by the government to act contrary to [religious] beliefs.' *Hobby Lobby*, 723 F.3d at 1137. Put another way, the substantial-burden inquiry evaluates the coercive effect of the governmental pressure on the adherent's religious practice and steers well clear of deciding religious questions." *Id.*

¶ 112 Further, in *Diggs*, an early case, the reviewing court held that the confiscation by prison authorities, from an Islamic inmate, of a religious pamphlet that contained a pledge to condemn correctional officers who hindered the practice of worshipping Allah did not constitute a substantial burden under RFRA, where the plaintiff did not assert that he was required by his religion to possess the pamphlet or to sign a pledge it set forth. *Diggs*, 333 Ill. App. 3d at 195. Thus, he failed to show that the confiscation prevented him from fulfilling any religious obligation mandated by Islamic law or practice. *Id.* The effect on a party's "subjective, emotional religious experience," specifically, "the diminishment of spiritual fulfillment—serious though it may be—is not a 'substantial burden' on the free exercise of religion." *Navajo Nation*, 535 F.3d at 1063-70 (rejecting tribe's challenge to federal government's approval of use for skiing of artificial snow containing recycled wastewater of which 0.00001% was comprised of

human waste; tribe had asserted that the use of artificial snow on (one percent of) a mountain it considered sacred desecrated the site, its religious ceremonies, and injured its religious sensibilities).

¶ 113 However, recently, the Supreme Court set forth a standard that is "much easier" to satisfy than one requiring a claimant to show that religious exercise was, for example, " 'effectively impracticable.' " See *Jones v. Carter*, 915 F.3d 1147, 1149 (7th Cir. 2019) (quoting *Schlemm v. Wall*, 784 F.3d 362, 364 (7th Cir. 2015)). See *Holt v. Hobbs*, ___ U.S. ___, 135 S. Ct. 854, 860-62 (2015) (Religious Land Use and Institutionalized Persons Act (RLUIPA), RFRA's sister statute,[2] case; "RLUIPA *** applies to an exercise of religion regardless of whether it is 'compelled.' "; Muslim inmate who wanted to grow ½-inch beard in accordance with his religious beliefs, which offended the department of corrections's grooming policy, demonstrated a substantial burden because he faced "serious disciplinary action" if he violated the policy and grew the beard;); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 688-91, 696, 720-23 (2014) (federal RFRA case; choice by three closely-held corporations, between providing contraceptive coverage for their employees in violation of their religious beliefs or paying a substantial fine

[2] 42 U.S.C. § 2000cc *et seq.* (2018). The statute governs two areas of government activity: land-use regulation and religious exercise by institutionalized persons. RLUIPA, like RFRA statutes, provides that "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution *** even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a) (2018).

that would enable them to omit the coverage to which they objected imposed a substantial burden on owners' religious exercise; noting that Congress had stated that federal RFRA should "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution") (quoting 42 U.S.C. § 2000cc-3(g) (2018)).

¶ 114 We conclude that the lawsuit here did not constitute a substantial burden on defendants' religious exercise. Defendants testified to the presence of gangs, specifically the Latin Kings, in their lives and in the lives of everyone around them in Elgin. They described their religious awakenings and, significantly, their beliefs that their calling was to minister to Latin Kings gang members. The State does not question the sincerity of defendants' religious beliefs. Saul, who accepted Christ after his brother's death, related how his life was in the middle of gang territory in Elgin and that he felt his purpose from God was to minister to students in the local schools. (Saul testified that he was never a Latin King.) Elias testified that he put himself in harm's way by speaking about God to gang members he encountered around town and that he sent text Bible messages to Oscar and Ruben, while they were still gang members, to motivate them to leave the gang. Elias related that, before the suit, his group, whose background was known by school district personnel, was allowed into the Elgin schools to speak to the students about the dangers of gangs. After the suit, they were not allowed into the schools. Also, because of the suit, Elias has not been able to preach the gospel when he runs into gang members around town. He fears being arrested or fined. Elias believed God called him to minister or witness to Latin King gang members and that his calling was gang outreach. The people he used to be with were the easiest for him to reach out to, he explained. The lawsuit has prevented him from reaching out to them. Ruben, in turn, testified that once God opened his eyes, he believed that he had to reach out to

Latin King gang members. Ruben, who had once been arrested for street gang contact, feared that the lawsuit would result in "trouble" with the police if he was caught with a gang member, and he did not associate with them afterwards. He also related how police disinvited him from an anti-gang awareness event after the lawsuit. The lawsuit, he further testified, instilled fear in him. Oscar similarly testified that, after he gave his life to Jesus, it was his religious calling to reach out to Latin King gang members. He shared his faith via phone and in person. He has also held Bible studies at his home and invited non-believers to attend. He also organized a small outreach program to reach out to other youth and spoke at his church. The lawsuit, Oscar stated, has prevented him from sharing his faith with Latin Kings. He worried about Elgin police and the effect on this suit. He also felt that he could not reach out to gang members via Facebook. Wolek related how communication with known gang members is one of the criteria the City of Elgin uses to identify potential gang members.

¶ 115 Other evidence, however, showed that defendants were still able to communicate their faith to Latin Kings gang members after the complaint was filed in this case. Oscar testified that he was not prevented from communicating his faith to Latin Kings in a different county or city. There were times when he wanted to reach out to gang members through Facebook to get together so he could share his faith with them, but felt that he could not do so because of the lawsuit. However, he conceded that no one told him that he could not do so and that he merely considered it an inconvenience. Elias testified how he communicated with gang members via text messages. Elias testified that he texted Ruben, Oscar, and other active gang members, sending them scripture quotes and letting them know that Jesus loved them and that they did not have to continue their lifestyle. He did not state that the lawsuit prevented from engaging in such communication, and the record does not reflect that police were monitoring defendants' cell

phones such that they would have discovered, and used against them, such evidence. Further, Ruben testified that he held Bible studies in his home and spoke about his faith at other churches. Oscar testified that he had phone conversations to reach out to gang members, spoke at his church, and held Bible studies in his home, where he invited non-believers to attend. There was no evidence that police monitored these activities or that they were curtailed by the lawsuit. As to defendants' school presentations, Saul testified that nothing prevented them from presenting in schools in other communities, but he chose not to do so. We acknowledge that defendants' personal experiences with gangs were centered in Elgin, however, their anti-gang message was not necessarily specific to that community. Indeed, Elias testified that it was easier to preach in Elgin. Furthermore, defendants themselves undercut their claims of alleged police harassment. Saul testified he was merely being paranoid when he assumed that two police officers in an unmarked car had followed him one day from his home to a shopping center. Additional evidence that defendants' religious activities were not substantially burdened is the fact that, following Galarza's shooting, they participated in an anti-gang march *after* the complaint was filed in this case. Ruben testified that he did not feel chilled at this time.

¶ 116 Finally, as to defendants' argument that the State's pursuit of an injunction years after it knew that defendants were no longer gang members constituted a substantial burden on their religious exercise, we note that a frivolous suit can amount to a substantial burden. See *World Outreach Conference Center v. City of Chicago*, 787 F.3d 839, 843 (7th Cir. 2015) ("frivolous suit aimed at preventing a religious organization from using its only facility—a suit that must have distracted the leadership of the organization, that imposed substantial attorneys' fees on the organization, and that seems to have been part of a concerted effort to prevent it from using its sole facility to serve the religious objectives of the organization (to provide, as a religious duty,

facilities for religious activities and observances and living facilities for homeless and other needy people)—cannot be thought to have imposed a merely insubstantial burden on the organization"). However, the suit here was not frivolous when filed and we decline defendants' request to so find.

¶ 117 In summary, the filing of the complaint in this case did not substantially burden defendants' religious exercise. Thus, the trial court's determination that they failed to show a RFRA violation was not erroneous. Having determined that no substantial burden was shown, we need not address whether the filing of the complaint in this case was in furtherance of a compelling governmental interest in reducing gang violence and was implemented by the least restrictive means. See *Meyers*, 95 F.3d at 1486 (once a plaintiff establishes that his or her exercise of religion was substantially burdened, the burden of proof shifts "to the government to demonstrate that the challenged regulation furthers a compelling state interest in the least restrictive manner"); see also 775 ILCS 35/15 (West 2018).

¶ 118 B. Sanctions

¶ 119 Next, defendants argue that the trial court erred in declining to impose sanctions on the State under Rules 219 (for a Rule 213 violation) and 137. They seek the imposition of sanctions or instructions to the trial court on how to calculate such sanctions. For the following reasons, we conclude that the trial court: (1) erred in denying Rule 219 discovery sanctions, without first holding a hearing to consider when the City of Elgin and, separately, the State knew or should have known of the purging of defendants' names from the police gang roster; but (2) did not err in failing to assess Rule 137 sanctions.

¶ 120 1. Rules 213 and 219

¶ 121 Defendants maintain that the State violated Rule 213 when it failed to supplement its answers to interrogatories with the fact that Elgin police did not consider any of the defendants to be "actually and in fact" gang members as far back as 2013 and contend that each of them would have been entitled to summary judgment years ago on the State's injunction request. Further, defendants assert, all of the defendants, the trial court, and this court would have been spared the time and resources that were wasted over the following four years, five days of trial in 2017, and, now, this appeal.

¶ 122 In response, the State argues that the fact that defendants had been purged from the gang roster in 2013 or 2014 could not have come as a surprise to them and, nevertheless, does not relate to the facts necessary to prove a violation under the Act (as Judge Akemann recognized at trial when he allowed defendants to make offers of proof). Ultimately, the State notes, the court determined that an injunction was not warranted for a different reason—that defendants were not gang members at the time the complaint was filed in September 2010, because attendance at the funeral was not persuasive evidence. Even if the purge was relevant to the State's duty to supplement, the State further argues, the fact that defendants were purged in 2013 or 2014 was not a surprise and could not have prejudiced them, as they were operating under a theory that the police were wrong to list them as gang members in 2010, let alone 2013. In other words, the State asserts, the fact that police considered them out in 2013 or 2014 would not make it more likely that defendants were out of the gang when they said they were in 2008 or 2009 or never in the gang. Having the date of the purge, the State further argues, would also not, as defendants speculate, have changed the outcome of their 2014 summary judgment motion, because: (1) the evidence did not show when in 2014 their names were purged; and (2) the operative date was the date the complaint was filed and the State could still seek an injunction (even with an allegation

of a change in circumstances). Further, the State argues that defendants could have subpoenaed the gang roster from the police early in the case. Finally, it asserts that defendants could not have been surprised by Wolek's trial testimony that they had been purged, given his (March 4, 2013) deposition testimony about the purging process.

¶ 123 Defendants reply that they *were* surprised to find out on the eve of trial in 2017 that they were not on Elgin's gang roster as far back as 2013. They argue, in addition, that they had no reason to believe that they had been purged, because the State continued to seek injunctions against them. The fact that the State continued to pursue injunctive relief up until trial strongly indicated that it still listed them as gang members. Defendants further argued that the State's failure to supplement its discovery responses prejudiced and injured them because, had they known this fact when the State should have informed them, the State's pursuit of an injunction would have been moot. An injunction, they maintain, if forward-looking, seeking to enjoin current violations of the law, not past violations. See, *e.g.*, *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042, ¶ 20 (because injunctive relief is forward-looking, it cannot remedy misconduct, such as the improper acquisition of trade secrets, that occurred in the past) (internal quotation marks omitted). The Act, defendants note, applies against those who "actually and in fact" belong to a gang, and the State, they maintain, knew that they were not gang members as far back as 2013. Thus, there was nothing for it to enjoin in 2014 through 2017. Defendants assert that, because the State failed to supplement, they suffered four additional and unnecessary years of litigation, prolonged restrictions on their religious activities, and increased expenses. They also take issue with the State's suggestion that they could have subpoenaed the State for the gang roster, arguing that it is not their duty to seek documents that the State is required to

disclose. Because the State continued to seek an injunction, they had no reason, they urge, to believe they were ever taken off of the roster and, thus, no reason to subpoena anything.

¶ 124 Whether a party is guilty of a discovery violation is an issue of law, which we review *de novo*. *People v. Hood*, 213 Ill. 2d 244, 256 (2004). A trial court's decision as to the appropriate sanction for a discovery violation is subject to review for an abuse of discretion. *Id.*

¶ 125 In each of their interrogatories issued to the State (in 2012), defendants asked the State to:

> "5. State the beginning and end dates upon which you believe this [defendant] first became a member of the Latin Kings, whether you believe he is still a member of the Latin Kings, and, if not, the last date upon which he was a member of the Latin Kings. Identify all evidence supporting your conclusions as to membership dates, and further identify all evidence which contradicts or tends to disprove your calculations."

¶ 126 Rule 213 governs discovery by interrogatories, as well as disclosure of witnesses who will testify at trial, and provides that "[a] party has a duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to that party." Ill. S. Ct. R. 213(i) (eff. Jan. 1, 2018). The Committee Comments state that the definition of "seasonably" is case-specific, "but in no event should it allow a party or an attorney to fail to comply with the spirit of this rule by either negligent or willful noncompliance." Ill. S. Ct. R. 213(i), Committee Comments (March 28, 2002). The purpose behind Rule 213 is to avoid surprise and to discourage tactical gamesmanship. *Department of Transportation v. Crull*, 294 Ill. App. 3d 531, 537 (1998). Rule 213's disclosure requirements are mandatory and subject to strict compliance by the parties. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109 (2004).

¶ 127 Pursuant to Illinois Supreme Court Rule 219(c), trial judges have the authority to enter a wide range of orders when a party unreasonably fails to comply with discovery rules and orders. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). Sanctions "may include an order to pay the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is willful, a monetary penalty." *Id.*

¶ 128 We conclude that the trial court erred in denying defendants' request for Rule 219 discovery sanctions without first holding a hearing on whether or not there was a Rule 213 violation. The record is silent as to when the City of Elgin and, separately, the State became (or should have become) aware of the purging of defendants' names from the police's gang roster. We remand for the court to assess all relevant factors, including when the City of Elgin and the State became (or should have become) aware of the purging of the gang roster, whether or not there was a Rule 213 violation, and, if so, whether Rule 219 sanctions are warranted.

¶ 129 2. Rule 137

¶ 130 As to Rule 137, defendants assert that the State violated its implicit requirement that an attorney dismiss a suit once it becomes evident that it is unfounded. The State, they argue, violated the rule after it continued court filings for four years after it no longer considered defendants to be gang members.

¶ 131 The State responds that the trial court did not err in denying such sanctions, where the police were not wrong to classify defendants as gang members as of the date of the complaint (September 8, 2010) and the date of Wolek's affidavits (November 2011). Further, it asserts that prosecutors were not without basis for filing and maintaining the charges. There was extensive evidence, the State urges, to support that the complaint statements had a factual basis and that the State had reasonable cause to bring and maintain the charges.

¶ 132 Defendants reply that the State violated Rule 137 when it continued court filings for four year after it no longer considered defendants to be gang members. Its pursuit of an injunction was no longer well grounded in fact or law, and its filings in furtherance of an injunction violated the rule. This needlessly increased the cost of litigation, wasted the court's resources, and only culminated after an unnecessary five-day trial. The State, in defendants' view, should be held accountable for its violation of the rule.

¶ 133 Rule 137 authorizes the imposition of sanctions against a party or his or her attorney for filing a pleading, motion, or other paper that is not well grounded in fact and warranted by existing law or which has been interposed for any improper purpose. Ill. S. Ct. R. 137 (eff. Jan. 1, 2018). Rule 137 implicitly requires that " 'an attorney promptly dismiss a lawsuit once it becomes evident that it is unfounded,' and this court has held that '[a] violation of this continuing duty of inquiry is sanctionable.' " *American Service Insurance v. Miller*, 2014 IL App (5th) 130582, ¶ 13 (quoting *Rankin v. Heidlebaugh*, 321 Ill. App. 3d 255, 267 (2001)). An appropriate sanction may include an order to pay the other party's reasonable expenses, including reasonable attorney fees, incurred as a consequence of the offending pleading, motion, or other paper. *Id.* Rule 137 does not authorize a trial court to impose sanctions for all acts of misconduct by a party or his or her attorney, only for the filing of pleadings, motions, or other papers in violation of the rule itself. *In re C.K.*, 214 Ill. App. 3d 297, 300 (1991). Further, as a general sanction provision, Rule 137 is not properly used to sanction conduct such as discovery violations where other more specific sanction rules apply. *Diamond Mortgage Corp. v. Armstrong*, 176 Ill. App. 3d 64, 71 (1988). The party seeking to have sanctions imposed by the court must demonstrate that the opposing litigant made untrue and false allegations without reasonable cause. *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1050-51 (1999). The purpose of Rule

137 is to prevent the filing of false and frivolous lawsuits. *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002). Yet, "the rule is not intended to penalize litigants and their attorneys merely because they were zealous, yet unsuccessful." *Peterson v. Randhava*, 313 Ill. App. 3d 1, 6-7 (2000). The rule is penal in nature and must be strictly construed. *Id.* at 7. Courts should use an objective standard in determining what was reasonable under the circumstances as they existed at the time of filing. *Whitmer*, 335 Ill. App. 3d at 514. A reviewing court should base its review of the trial court's decision on three factors: (1) whether the court's ruling was an informed one; (2) whether the ruling was based on valid reasons that fit the case; and (3) whether the ruling followed logically from the stated reasons to the particular circumstances of the case. *Wagener v. Papie*, 242 Ill. App. 3d 354, 364 (1993). A ruling on Rule 137 sanctions should not be overturned unless the trial court has abused its discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). A court has abused its discretion when no reasonable person would agree with its decision. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 52.

¶ 134 We conclude that the trial court did not err in denying defendants' request to assess Rule 137 sanctions against the State. At the time the complaint was filed in this case, the State's pleading was arguably well-grounded in fact or law and was not frivolous.[3] The fact that the State did not ultimately prevail does not, in itself, warrant sanctions. Defendants' argument focuses on subsequent events, namely, the purging of their names from the City of Elgin's gang roster. However, they miss the point that, on the date the complaint was filed, the State's allegations had arguable merit. Further, it sought an injunction to have defendants cease their alleged gang-related activities from that point forward. The fact that defendants were

[3] This disposition has not considered the merits, or lack thereof, of the 11 criteria used by the police in determining whether or not an individual is a gang member.

subsequently purged from the gang roster did not change the fact that there was an arguable basis for the State's allegations, in 2012, when it filed the complaint. For this reason, we cannot conclude that the trial court's denial of sanctions was an abuse of discretion.

¶ 135 III. CONCLUSION

¶ 136 For the reasons stated, the judgment of the circuit court of Kane County is affirmed in part and reversed in part and we remand the cause for proceedings consistent with this order.

¶ 137 Affirmed in part and reversed in part. Cause remanded.