



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**CLIFFORD OCHSER v. GERARD FUNK ET AL.
CV-11-0028-PR**

PARTIES:

Petitioner: Plaintiff Clifford J. Ochser (“petitioner”)

Respondents: Defendants Deputy Gerard Funk and Jane Doe Funk, husband and wife, and Sergeant Anthony R. Cruz and Jane Doe Cruz, husband and wife (“respondents”)

FACTS:

Five years before the events at issue, petitioner was a party to divorce proceedings in Maricopa County Superior Court. In January 2003, in connection with those proceedings, the court found petitioner in contempt for failing to make retirement plan and child support payments and issued a Child Support Arrest Warrant for petitioner’s arrest. In March 2003, the basis for the warrant was resolved and the court quashed the warrant. The court’s minute entry quashing the warrant indicated that it was transmitted to the Maricopa County Sheriff’s Office. As a precaution, however, petitioner obtained a certified copy of the order and made copies, which he kept in both his office and vehicle.

In May 2004, petitioner’s warrant was mistakenly selected for inclusion in the Sheriff’s Office “Operation Mother’s Day 2004,” designed to arrest “deadbeat” parents. Respondents Funk and Cruz were assigned to execute warrants in northern Arizona. They traveled to petitioner’s workplace, the Lowell Observatory in Flagstaff, and when petitioner drove up in an Observatory van, they arrested, handcuffed, and shackled him, informing him that he was under arrest on a Child Support Arrest Warrant. Petitioner told them he had a certified copy of the court order quashing the warrant, and they could find the copy in the building in his office inbox. The officers refused, saying they had everything they needed to carry out the arrest. When petitioner continued to protest that the arrest warrant was invalid, one of the officers entered the Observatory building and made calls from the Observatory phone, allegedly confirming that the arrest warrant was valid.

After his arrest, petitioner was incarcerated but was released the next day when it was determined that the warrant had been quashed. In May 2006 he filed a civil rights action under 42 U.S.C.A. §1983 in Maricopa County Superior Court. The court granted respondents’ motion for summary judgment, concluding that:

U.S. Supreme Court and Ninth Circuit authority provide that a law enforcement officer is entitled to qualified immunity from a §1983 claim when the officer makes an arrest on a facially valid warrant. *Baker v. McCollan*, 443 U.S. 137 (1979);

Arnsberg v. United States, 757 F. 2d 971 (9th Cir. 1985), *cert. denied* 475 U.S. 1010 (1986). Plaintiff does not challenge that the warrant was valid on its face. In essence, Plaintiff argues that these Defendants were required to investigate Plaintiff's claim that the warrant had been quashed. *Baker* is to the contrary. As a result, Defendants' failure to investigate did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

Petitioner appealed. A panel of the Arizona Court of Appeals, over a dissent by Judge Diane Johnsen, affirmed the trial court's order granting summary judgment in favor of respondents. The Arizona Supreme Court granted petitioner's Petition for Review.

ISSUES:

1. Does the Fourth Amendment's prohibition against unreasonable seizures require that a law enforcement officer look at immediately available information that would show that the warrant, while seemingly facially valid, in is fact invalid?
2. Did the Court of Appeals' majority decision improperly merge the concept of the constitutional right at issue with the separate qualified immunity inquiry as to whether the right was clearly established and, as such, should this Court accept review to clarify the proper procedures for Arizona courts to follow in evaluating a claim of qualified immunity?

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.