

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *B.A.J. v. J.S.V.*, 2018 NSCA 49

**Date:** 20180612

**Docket:** CA 468531

**Registry:** Halifax

**Between:**

B.A.J.

Appellant

v.

J.S.V.

Respondent

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**Restriction on Publication: pursuant to s. 94(1) *Children and Family Services Act*, S.N.S. 1990, c. 5**

**Judge:** The Honourable Justice David P.S. Farrar

**Appeal Heard:** May 31, 2018, in Halifax, Nova Scotia

**Subject:** **Family Law. *Parenting and Support Act*, R.S.N.S. 1989, c. 160. Custody.**

**Summary:** By Consent Order dated May 28, 2015, the appellant, B.A.J., was granted sole care and custody of the parties' child. The order further provided that B.A.J. was authorized to travel with the child at any time, in or outside of Canada, without the need for consent from any person, including J.S.V. The order did not provide for access between the child and J.S.V.

J.S.V. filed a Notice of Variation application on March 11, 2016, seeking access to the child. On October 12, 2016, he filed a new application seeking custody.

Ten appearances were held before the Supreme Court, Family Division. The main issue discussed in the appearances was the ability to serve B.A.J. As it turns out, B.A.J. was being

protected by a police agency because it had concluded she was a potential victim of domestic violence at the hands of J.S.V.

It was never established that B.A.J. was properly served with the court process.

Approximately four months following the last court appearance, without any indication that he was going to do so, the judge issued a decision and order which required the child to be returned to Nova Scotia to be placed in the primary care of J.S.V. He also issued a warrant for B.A.J.'s arrest. B.A.J. appealed.

**Issues:**

- (1) Was B.A.J. properly served with the court process?
- (2) Did the judge err in removing the child from the custody of B.A.J.?
- (3) Did the judge err in issuing an arrest warrant?

**Result:**

The appeal was allowed and the arrest warrant quashed. B.A.J. was never properly served with the court process. The judge made a decision without hearing evidence from any party with respect to the best interests of the child. His failure to ensure that B.A.J. was aware of the proceedings, making a decision without hearing evidence and changing the custody agreement, resulted in a substantial wrong or miscarriage of justice.

Furthermore, the judge had no evidentiary basis upon which he could determine the best interests of the child.

Finally, there was no basis in law or in fact which would justify an arrest warrant in these circumstances. There was no evidence B.A.J. breached any court order. There were no contempt proceedings brought against her. The appellant did not seek costs and none were awarded.

*This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 22 pages.*