

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Fitzpatrick, Judge Bumgardner and
Senior Judge Hodges

SUFFOLK DEPARTMENT OF SOCIAL SERVICES

v. Record No. 1705-00-1

ORLANDO ELLIS

MEMORANDUM OPINION*

PER CURIAM

MARCH 13, 2001

FROM THE CIRCUIT COURT OF THE CITY OF SUFFOLK
Rodham T. Delk, Jr., Judge

(C. Edward Roettger; Curt G. Spear; Beverly
Brooks; Office of City Attorney, on brief),
for appellant. Appellant submitting on
brief.

No brief for appellee.

This matter arises out of a petition filed by the City of
Suffolk Department of Social Services (Department) to terminate
Orlando Ellis' parental rights in his minor daughter. After the
City of Suffolk Juvenile and Domestic Relations District Court
denied the Department's petition, the Department appealed to the
Suffolk Circuit Court. After closing arguments, the circuit
court also denied the petition. The Department appeals from
that ruling.

Counsel for the Department drafted the order for the June
13, 2000 ruling on the City Attorney's Office stationary. At

* Pursuant to Code § 17.1-413, this opinion is not
designated for publication.

the end of the order denying the Department's petition, the Department's counsel signed the order "We ask for this."

Having expressly agreed with the trial court's conclusions, the Department is now precluded from complaining of attendant error. "'The [Department], having agreed upon the action taken by the trial court, should not be allowed to assume an inconsistent position.'" Manns v. Commonwealth, 13 Va. App. 677, 679, 414 S.E.2d 613, 615 (1992) (quoting Clark v. Commonwealth, 220 Va. 201, 214, 257 S.E.2d 784, 792 (1979)). The Department's "Written Statement of Facts/Evidence" likewise fails to preserve the Department's objections for appeal.

"The burden is upon the appellant to provide us with a record which substantiates the claim of error. In the absence thereof, we will not consider the point." Jenkins v. Winchester Dep't of Soc. Servs., 12 Va. App. 1178, 1185, 409 S.E.2d 16, 20 (1991). Based upon the record before us, we find no evidence that the Department preserved any issues for appeal. Accordingly, the decision of the circuit court is affirmed.

Affirmed.