**MOT**

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

) Dept. No.:

**\_\_\_\_\_\_\_\_\_\_\_\_\_,** ) Courtroom:

DOB: )

AGE: \_\_\_ YEARS OLD )

)

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**\_\_\_\_\_\_\_\_\_\_\_\_\_** )

DOB: )

AGE: \_\_\_ YEARS OLD )

)

MINORS. )

)

**MOTION FOR AN ORDER FOR SIBLING VISITATION**

COMES NOW, \_\_\_\_\_\_\_\_\_\_\_, Esq., of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and on behalf of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** minors, and submits this Motion for an Order for Sibling Visitation.

This Motion is based upon the following Memorandum of Points and Authorities, the records and files in this case, and such additional documentary and oral evidence as may be presented at the hearing on this Motion.

Dated this \_\_\_\_\_\_day of August, 2010

**NOTICE OF MOTION**

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ESQ., DEPUTY DISTRICT ATTORNEY, DISTRICT ATTORNEY’S OFFICE:

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, CASE MANAGER, DEPARTMENT OF FAMILY SERVICES

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION on for hearing before the above-entitled court on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2010 at \_\_\_\_\_\_m.

DATED this \_\_\_\_\_\_\_ day of August, 2010.

**STATEMENT OF FACTS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ were made Wards of the Eighth Judicial District Court, Juvenile Division in Case No. \_\_\_\_\_\_\_\_\_\_\_ on April 5, 2005. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is twelve (12) years old, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is eleven (11) years old, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is ten (10) years old, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is eight (8) years old, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is four (4) years old.

Their older half sibling \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was placed with her relative. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ have been together in placement. The children are in a pre-adoptive home. At this time, they see their sister \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ once a month. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was an integral part of the oldest four children before they were placed in foster care. From what the children say and remember, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was their primary caretaker and primary attachment. Their mother had significant mental health issues and was the perpetrator of domestic violence on their father. They looked to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as the most stable influence in their formative years.

The visitation requested by the children is every other weekend. This needs to be incorporated into an Order before they are adopted to ensure visitation post adoption.

**II.**

**MEMORANDUM OF POINTS AND AUTHORITIES**

1. **This Court Has Original and Exclusive Jurisdiction Over This Matter.**

Original jurisdiction over this matter is vested in this Court:

**“NRS 3.223  Jurisdiction of family courts.**

      1.  Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq., in each judicial district in which it is established, the family court has original, exclusive jurisdiction in any proceeding:

      (a) Brought pursuant to title 5 of NRS or [chapter 31A](http://www.leg.state.nv.us/NRS/NRS-031A.html#NRS031A), 123, 125, 125A, 125B, 125C, 126, 127, 128, 129, 130, 159, 425 or 432B of NRS, except to the extent that a specific statute authorizes the use of any other judicial or administrative procedure to facilitate the collection of an obligation for support.”

N.R.S. § 432B.410 (1) further provides that: “Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.” Having taken \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ into protective custody, pursuant to a Petition –Abuse/Neglect filed by the Clark County Department of Family Services under N.R.S. § 432B.470, this Court acquired subject matter jurisdiction over this case, and personal jurisdiction over \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, minors.

**B. Nevada Law Requires That The Department of Family Services Keep Siblings Together.**

Since 1985, Nevada law has protected children from abuse and neglect by their parents or legal guardians, authorizing their placement into the protective custody of the State or County.

Children wrenched from the home of parents/guardians rely heavily on a continued association with the only family left to them – their siblings – for the sense of love, belonging and stability that all children need. Recognizing this, the Nevada Legislature amended N.R.S. § 432B.550 (Determination of custody of child by court) in 1999 to add a preference for the co-placement of siblings taken into the protective custody of the County or State:

“5. In determining the placement of a child … , if the child is not permitted to remain in the custody of his parents or guardian, preference must be given to *placing the child***:**

*(a) With* any person related within the third degree of consanguinity[[1]](#footnote-1) to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this state.

*(b) If practicable, together with his siblings*.”[[2]](#footnote-2)

In 2005, the Nevada Legislature replaced this weaker “preference” for sibling co-placement with a **mandatory presumption**, through an amendment to N.R.S. § 432B.550:

5.  In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of his parents or guardian**~~[~~**~~, preference~~**]** ***:***

*(a) It must be presumed to be in the best interests of the child to be placed together with his siblings.*

*(b) Preference*must be given to placing the child**~~[~~**~~:~~

(a) ~~With~~**~~]~~** *with*any person related within the third degree of consanguinity to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

**C. If The Department of Family Services Is Unable To Keep Siblings Together, It Must Develop A Plan For Visitation Among The Separated Siblings.**

At the same time the Legislature clarified its intention that siblings in protective custody be placed together, the Legislature also amended N.R.S. § 432B.580 (Semiannual review by court of placement of child), to include the following requirement:

      “2.  An agency acting as the custodian of the child shall, before any hearing for review of the placement of a child, submit a report to the court, or to the panel if it has been designated to review the matter, which includes **[an]** ***:***

*(a) An*evaluation of the progress of the child and his family and any recommendations for further supervision, treatment or rehabilitation**[.]***; and*

*(b) Information concerning the placement of the child in relation to his siblings, including, without limitation:*

*(1) Whether the child was placed together with his siblings;*

*(2) Any efforts made by the agency to have the child placed together with his siblings;*

*(3) Any actions taken by the agency to ensure that the child has contact with his siblings; and*

*(4) If the child is not placed together with his siblings:*

*(I) The reasons why the child is not placed together with his siblings; and*

*(II) A plan for the child to visit his siblings, which must be approved by the court.*”[[3]](#footnote-3)

The language of the statute is not conditional: the obligation to develop a visitation plan is not made optional for the Department, nor is it made to depend upon a written request to the Department or a petition to this Court by the minors. Unless the Department provides this Court with evidence to overcome the presumption that co-placement and, absent that, visitation with siblings is not in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s best interests, this Court should not allow the Department to shirk its responsibility to the minors and must allow them to maintain their relationship with their siblings. [[4]](#footnote-4)

It is the express public policy of this State to presume that co-placement with siblings is in the best interests of a child, and that there is an affirmative duty on State and County child welfare agencies to keep siblings groups intact and, failing that, to ensure that a child continues to have visitation with their siblings to maintain the family bond. At each hearing to review the children’s placement apart from his brothers or sisters, the child care agency must justify to the Court why it has been unable to keep siblings together, and having, having failed in this primary duty, provide the Court with a visitation plan to sustain the sibling relationship during the children’s protective custody. This approved visitation plan is memorialized by a Court Order for sibling visitation.

Since the Department has made attempts with their older sibling, children now seek an Order from this Court confirming visitation.

**III.**

**CONCLUSION**

When children are taken from their parents and placed in the protective custody of the State or County, Nevada law presumes that keeping them together is in their best interests. A child welfare agency has the affirmative obligation to either place siblings together or, failing this, provide a plan for visitation that will preserve their sibling relationship. This plan must be approved by a Court and memorialized in a Sibling Visitation Order. In so doing, the Court should consider only what is in the best interests of the children: mere inconvenience to a foster caretaker or Department caseworker is not sufficient to overcome the children’s right to preserve the love and mutual support system engendered and maintained through a sibling relationship.

Accordingly, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ respectfully requests that this Court Order The Clark County Department of Family Services to develop a placement plan that for visitation for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with their siblings, and present it to this Court for approval, in the form of an Order for Sibling Visitation, within fourteen (14) days from the date of the hearing on this Motion.

Respectfully submitted this       day of August, 2010.

**AFFIDAVIT OF COUNSEL**

STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, after first being duly sworn, deposes and says:

1. I am a licensed practicing attorney appointed to represent subject minors, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. I have personal knowledge of the facts alleged herein or the facts are based on information and belief.

3. I have been their attorney for over 2 years.

4. The child has a strong bond and attached to each other.

5. As they are in a pre-adoptive home, a sibling visitation order must be in place.

6. In talking to the children individually two weeks ago, they request to see \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ every other week.

By:

, ESQ.

SUBSCRIBED AND SWORN to before me

this day of August, 2010 by

NOTARY PUBLIC in and for said

County and State

1. . In 2009, this was expanded to allow placement within the fifth degree of consanguinity.

   [↑](#footnote-ref-1)
2. . 70th Legislative Session, Nevada Assembly Bill 158, strikethrough signifies deletions, italics signifies newly added language. [↑](#footnote-ref-2)
3. 73rd Legislative Session, Nevada Assembly Bill 42, strikethrough signifies deletions, italics signifies newly added language. [↑](#footnote-ref-3)
4. Where the child welfare agency fails in its responsibility to develop a sibling visitation plan for approval by the Court, a child may be able to petition the Court for a visitation order under the Nevada statute relating to child custody and visitation (N.R.S.§ 125C.050), as occurred in this case. However, the availability of this petition right, also available to noncustodial parents, grandparents and fictive kin, among others, in no way relieves the child welfare agency of its responsibility to comply with the express requirements of N.R.S. § 432B.880 or dilutes the statutorily-created right of sibling visitation contained therein. Given the small percentage of children in State/County custody who have access to any independent legal representation, the rights granted these children by the Legislature wholly illusory if it could be exercised only by requiring a *minor child* to petition a Court for visitation order. [↑](#footnote-ref-4)