**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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AGE: \_\_ YEARS OLD )

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DOB: )

AGE: \_\_ YEARS OLD )

)

Minors. )

**MOTION FOR SIBLING VISITATION AND TO INCORPORATE ANY VISITATION ORDER INTO ADOPTION DECREE**

NOW COMES the minor children, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and through their attorney, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ESQ., of FIRM, and hereby files this MOTION FOR SIBLING VISITATION AND TO INCORPORATE ANY VISITATION ORDER INTO THE ADOPTION DECREE. This Motion is based upon the following Memorandum of Points and Authorities and any oral argument allowed at the time of the hearing of this matter.

Dated this \_\_\_\_\_ day of July, 2014.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NOTICE OF MOTION**

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_, ESQ., DEPUTY DISTRICT ATTORNEY, JUVENILE DIVISION;

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, DEPARTMENT OF FAMILY SERVICES;

TO: ADOPTION WORKER, DEPARTMENT OF FAMILY SERVICES;

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ESQ., ATTORNEY FOR NATURAL MOTHER.

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 \_\_\_\_\_\_\_\_\_\_, 2014 at \_\_\_\_:\_\_\_\_\_ \_\_\_\_.m.**

**NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.**

DATED this \_\_\_\_\_ day of July, 2014.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**MEMORANDUM OF POINTS AND AUTHORITIES**

1. **FACTUAL BACKGROUND STATEMENT**

This case originally involved four children who share a natural mother in common. The natural mother is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 12 years old, \_\_\_\_\_\_\_\_\_\_\_\_, 10 years old, and \_\_\_\_\_\_\_\_\_\_\_\_, 6 years old, are siblings. They were made wards of the Juvenile Court and placed in the custody of Clark County Department of Family Services (hereinafter “DFS”) beginning on May 11, 2012. Their half sibling, \_\_\_\_\_\_\_\_\_\_\_\_\_\_, was also made a ward of the court at that time.

Prior to coming into custody, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_ grew up together and lived in the same home. After coming into care, they were placed in a number of homes in various configurations.

Currently, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_ are placed together in a foster home. \_\_\_\_\_\_\_\_\_\_\_\_\_, however, was able to reunite with her natural father. Wardship as to \_\_\_\_\_\_\_\_\_\_\_\_\_was terminated on April 22, 2014 and full custody was returned to her father.

Even with all of the transitions that have occurred, \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_ still maintain a close relationship with their sister \_\_\_\_\_\_\_\_\_\_\_\_. They currently speak on the telephone frequently and meet to spend time together.

A termination of parental rights trial is scheduled for July 24, 2014. DFS and the State are requesting to terminate parental rights as to \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_. This Motion for Sibling Visitation Order and Inclusion in Any Adoption Decree is being filed to request that the Court protect and preserve this sibling group’s relationship.

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1. **LEGAL ARGUMENT**
2. **NEVADA SUPPORTS VISITATION AND PRESERVATION OF SIBLING RELATIONSHIPS.**

The State of Nevada has long recognized the existence and the importance of maintaining sibling relationships especially for youth in foster care. It is for these reasons, the Nevada Legislature has passed legislation requiring a presumption that sibling groups should be placed together. The Legislature also mandated that visitation be encouraged during the time siblings are in separate homes if this presumption is rebutted. Furthermore during the legislative session of 2009, the statute was again amended to require that courts conduct hearings to determine whether to include visitation orders for siblings in the final adoption decrees. The only consideration for the courts in determining visitation is the best interests of the child.

In 1999, the Legislature added subparagraph (b) to subsection 5 of NRS 432B.550. Subparagraph (b) created a preference that a child, in need of protection and not permitted to remain in parental custody, be placed together with siblings, if practicable. In 2005, the Legislature, again recognized the importance of sibling relationships, and enacted Assembly Bill 42 which amended the language of NRS 432B.550 to change the preference for siblings to be placed together to a presumption that it is in their best interest to be placed together.[[1]](#footnote-1)

NRS 432B.550(5) read as follows:

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:

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 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 the State.[[2]](#footnote-2)

In amending 432B.550(5), the Legislature understood that Assembly Bill 42 was recognized:

As an important step in helping . . . to ensure that children in the foster care system maintain a very important connection. Setting expectations for child welfare agencies to facilitate the maintenance of these relationships during a serious family disruption is important. Sibling ties represent a special support system, one that is reflected in its uniqueness by being the longest-lasting relationship that a person may have. Splitting siblings in foster care interrupts the sole connection a child may have to his or her family origin. The loss can negatively impact the child through his or her lifetime.[[3]](#footnote-3)

Another statutory amendment made by the Legislature during the 2005 session reflects the Legislature’s focus on the significant relationship which exists between dependent children and their siblings.[[4]](#footnote-4) NRS 432B.580 was amended to require that specific information regarding siblings be provided to the Court semiannually; specifically, whether siblings are placed together, what efforts were made to place them together, what actions were taken to ensure sibling contact, and a complete plan for sibling visitation.[[5]](#footnote-5) Additionally, subsection (4) to NRS 432B.580 was added in 2005, which requires that,

After a plan for visitation between a child and his siblings submitted pursuant to subparagraph (4) of paragraph (b) of subsection 2 has been approved by the court, the agency which provides child welfare services must request the court to issue an order requiring the visitation set forth in the plan for visitation. If a person refuses to comply with or disobey an order issued pursuant to this subsection, he may be punished as for a contempt of court.[[6]](#footnote-6)

At the 2009 session of the Nevada Legislature, Chapter 127 of the NRS was again amended by adding a new section 10 to read as follows:

1. If a child who is in the custody of an agency which provides child welfare services is placed for adoption, the agency must provide the court which is conducting the adoption proceedings with a copy of an order for visitation with a sibling of the child that was issued pursuant to NRS 432B.580 and the order for visitation with a sibling in the decree of adoption.

2. Any interested party in the adoption, including, without limitation, the adoptive parent, the adoptive child, a sibling of the adoptive child, the agency which provides child welfare services, or a licensed child-placing agency may petition the court to participate in the determination of whether to include an order of visitation with a sibling in the decree of adoption.

3. The sole consideration of the court in making a determination concerning visitation with a sibling pursuant to this section is the best interest of the child.

This consistent pattern of legislation clearly evidences a concern, favor and mandate of the Nevada Legislature to protect sibling relationships. The statutory provisions require that the courts actively assist children in the foster care system to maintain their important sibling bonds, both while they are in the dependency system, and afterwards if they are adopted. Why else would Legislature amend the statue and add a new section that specifically requires the court to determine if the best interests of the child dictates that an order of visitation be included in the final adoption decree?

In this case, \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ have been placed in a foster home. Their sister, who had originally been in foster care with them, was fortunate and able to reunite with her father. All of the children share a deep bond and wish to continue to have contact with one another. They grew up together and lived together until they were separated during the foster care process.

These children have all expressed their wishes to have a continued sibling relationship with one another. Additionally, the law presumes that it is in their bests interests to continue visiting and communicating with each other, even in the event that termination of parental rights is granted and/or they are adopted.

1. **CONCLUSION**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s requests are exceedingly modest. They ask simply to continue to be able to visit with one another, once or twice a month for two (2) to four (4) hours, to be allowed to call each other on the telephone, and to exchange cards, letters gifts, and pictures. The parent, custodian, and/or legal guardian of these children can allow more contact if time and conditions allow. The Nevada Legislature and statutes will allow nothing less.

Dated this \_\_\_\_\_ day of July, 2014.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***CERTIFICATE OF MAILING***

I HEREBY CERTIFY that on the \_\_\_\_\_\_\_ day of July, 2014, I placed a true and correct copy of the foregoing ***MOTION FOR SIBLING VISITATION AND TO INCORPORATE, ANY VISITATION ORDER INTO ADOPTION DECREE*** postage fully prepaid, in the United States Mail addressed as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq.

Deputy District Attorney Juvenile

Family Court

601 N. Pecos Road, Room 470

Las Vegas, Nevada 89101

*Attorney for Department of Family Services*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Case Manager

Department of Family Services

701 N. Pecos Road, Bldg. K

Las Vegas, Nevada 89101

ADOPTION WORKER

Department of Family Services

701 N. Pecos Road, Bldg. K

Las Vegas, Nevada 89101

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

An employee of

FIRM

1. Hearing on A.B. 42 before the Assembly Comm. on Health and Human Serv., 73rd Leg. (Nev., March 7, 2005). [↑](#footnote-ref-1)
2. In 2009, this was expanded to allow placement within the fifth degree of consanguinity. [↑](#footnote-ref-2)
3. Hearing on A.B. 42 before the Assembly Comm. On Health and Human Serv., 73rd Leg. (Nev., March 7, 2005). [↑](#footnote-ref-3)
4. A.B. 42, 73rd Leg. (Nev. 2005). [↑](#footnote-ref-4)
5. NRS 432B.580(2). This provision reads as follows:

   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:

   (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 place together with his siblings;

   (3) Any action 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 reason why the child was not placed together with his siblings; and

   (II) A plan for the child to visit his siblings, which must be approved by the court. [↑](#footnote-ref-5)
6. NRS 432B.580(4) [↑](#footnote-ref-6)