**MOT**

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

) Dept. No.:

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

DOB: )

AGE: \_ YEARS OLD )

)

A Minor. )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**Motion to review placement, services, and request for sibling visitation order**

COMES NOW, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and through her attorney, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq. of FIRM and brings this Motion to Review Placement, Services, and Request for Sibling Visitation Order.

DATED this \_\_\_\_\_\_\_ day of March, 2012.

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

**NOTICE OF MOTION**

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_, ESQ., Deputy District Attorney, Juvenile

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_, Case Manager, Department of Family Services

TO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_, Court Appointed Special Advocate

**PLEASE TAKE NOTICE** that a hearing on this Motion for relief will be held before the Eighth Judicial District Court located on the first floor of the Family Courts and Services Center located at 601 N. Pecos Road Las Vegas, Nevada 89101, on the       day of      , 2012 in Department O 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 March, 2012.

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

**STATEMENT OF FACTS**

On or about November 1, 2006, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”) and her twin sister, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”) were declared wards of the Court as a result of continued substance abuse by both parents. In addition to these twins, the natural mother had two other children, \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”) who had been previously declared wards of the Court in 2005. Although the Court approved placement of all four children, hereinafter “the siblings,” with the natural mother, after a few months they were removed and placed at Child Haven.

On or about February 24, 2007, the siblings were placed together in the foster home of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who had committed to adoption. However, seventeen months (17) later, on or about July 22, 2008, the siblings were removed from this home due to allegations of physical abuse by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

On or about August 6, 2008, parental rights were terminated. The Supreme Court upheld the termination and issued a written decision in March 2010.

Following the placement disruption in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home, the siblings resided together at Child Haven until August 8, 2008, when they were placed together in the foster home of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. For the next three years, from August 2008 through July 2011, the siblings were maintained and cared for by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with the intention that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was adopting the children.

However, on or about July 20, 2011, while at Child Haven for respite care, the Department of Family Services (hereinafter, “Department”), made a decision to not place the siblings back with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ due to several concerns. As a result, for the very first time, the siblings were separated. While \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ remained at Child Haven, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ were placed in the foster home of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. As to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, she had previously been placed at Oasis Behavioral Treatment Center.

Thereafter, on or about September 9, 2011, despite concerns the Department had with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was again placed in her home. Following a brief stay, on November 10, 2011, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was once again removed from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ home and placed back at Child Haven. Since then, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has been placed separately from her siblings and is currently in a new foster home. Since being separated from her siblings, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has been in three (3) foster homes, Child Haven, and Montevista hospital.

On or about January 9, 2012, Counsel filed a Notice of Appearance on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ after receiving a Mental Health Petition.

1. **LEGAL ARGUMENT**
2. THE DEPARTMENT OF FAMILY SERVICES HAS FAILED TO REBUT THE PRESUMPTION THAT IT IS IN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, AND \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_S’ BEST INTEREST TO BE PLACED TOGETHER

Sibling relationships are too important to ignore or dismiss. Recognizing this, the Nevada Legislature amended N.R.S. § 432B.550 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.

**~~[~~**~~(b) If practicable, together with his siblings.~~**~~]~~** [[3]](#footnote-3)

In short, it became 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 sibling groups intact. Despite this, the Department unilaterally decided that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ did not need to be placed with her siblings.

Upon assignment to this matter, Counsel immediately questioned the Department, CASA, and other team members as to why the siblings were separated. According to the Report for Permanency and Placement Review filed on October 27, 2011, “the children were not able to be placed together due to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s allergy to dogs.”[[4]](#footnote-4) Additionally, the Department referenced concerns regarding \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s sexualized behaviors and aggressiveness towards her twin sister, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.[[5]](#footnote-5) However, in review of the entire file, including over four hundred fifty (450) pages of UNITY notes, there is very little or no mention of any such incidents where \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ acted sexually inappropriate towards any of her siblings. Instead, the file is filled with case notes referencing challenging behaviors of all of the siblings, not just \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Yet, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the only one who has been isolated from her siblings.

Additionally, the CASA report filed on October 24, 2011, confirms that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was not placed with her sisters because the foster parent has a dog in the home.[[6]](#footnote-6) Further, the report states that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ experienced behavioral problems in school.[[7]](#footnote-7) These problems may have been attributed to \_\_\_\_\_\_\_\_\_\_\_\_ being separated from her twin sister, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as the two had previously been in the same class. The report also reflects, “on a daily basis, she is asking about her twin sister, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.”[[8]](#footnote-8)

Even if this court should assume that there has been sexually inappropriate behaviors by any of the siblings, this still should not preclude placement of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with her siblings. Reasonable efforts require the Department to ensure the appropriate services and treatment are provided to the siblings so that co-placement could be reconsidered at a later date. The behaviors the Department references in their court report are not recent or new behaviors. These behaviors have been exhibited by all of the siblings in every placement. It is particularly interesting to note, that prior to the separation of the siblings, none of the court reports expressed concern regarding the siblings being maintained together. If in fact the Department had safety concerns regarding the co-placement of the siblings, a safety plan should have been developed. Implementing a safety plan that provided for separate bedrooms, baby monitors to supervise sibling interaction, and continued treatment to address the inappropriate behavior could allieviate concerns. This has not been done in this case.

Unfortunately, in the instant matter, the Department placed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ into a foster home knowing that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ could NEVER be placed in that same foster home due to her allergies to dogs. In essence, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has been precluded from securing permanency with her siblings, simply due to allergies. Allergies should not be sufficient to rebut the presumption that the siblings be placed together. This is unacceptable and in complete disregard for NRS 432B.550.

Counsel recognizes that due to the passage of time, it is likely that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ have now bonded to their foster parent. Further, Counsel has been advised that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ could be an adoptive resource for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s twin sister, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. However, this should not hinder efforts by the Department to continue recruiting for an adoptive resource for all of the siblings. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was not only neglected by her biological parents, this abuse continued while in foster care, and she continues to feel abandoned and neglected as a result of being separated from her siblings. The mere fact that she is separated from them has been traumatizing for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. On several occasions, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has cried after she visits with her sisters and has often asked why she cannot be placed in the same home.

1. THE DEPARTMENT OF FAMILY SERVICES HAS FAILED TO ESTABLISH A SIBLING VISITATION PLAN AS REQUIRED BY NRS 432B.580

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, 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.*”[[9]](#footnote-9)

Understanding the difficulty in finding placements for four siblings with challenging behaviors, it is still imperative that at the very least, reasonable efforts be made to ensure that siblings remain together. The fact that it may be difficult or inconvenient for the Department to find an appropriate placement is not sufficient to overcome \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s right to preserve the love and mutual support system maintained through her relationship with her siblings. Counsel has made attempts through emails to the placement worker assigned to the case, in hopes of obtaining more information regarding which foster home agencies have been contacted to preserve placement of the siblings together.[[10]](#footnote-10) Unfortunately, these attempts have gone unanswered for several weeks.

The most recent Court report fails to convey what efforts the Department has made to place these siblings together. It merely acknowledges that the siblings have been separated due to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s allergies. It does not give any insight on how many homes were contacted, how many families met with the children, nor does it have a written sibling visitation plan that is adhered to. In the short time that Counsel has been on this case, numerous emails have circulated regarding missed sibling visits. It is unfortunate that these siblings have endured the loss of their biological family, two prospective adoptive homes, and specifically for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the loss of daily interaction and bonding with her siblings. This is a significant loss. As a result of this loss, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ continues to struggle with her behaviors as evidenced by placement disruptions, acute hospitalizations, and short term stays at Child Haven.

/ / /

/ / /

1. THE DEPARTMENT OF FAMILY SERVICES HAS FAILED TO MAKE REASONABLE EFFORTS TO KEEP THESE SIBLINGS TOGETHER, AS A CONDITION OF TITLE IV-E FUNDING

The Fostering Connections to Success and Increasing Adoptions Act, enacted on October 7, 2008, offers important improvements for foster care children to maintain meaningful family connections. The Act recognizes that sibling connections are significant to a child’s emotional and social development since siblings often provide the connection and stability that is no longer available from the child’s parents.

Accordingly, the Act tries to improve outcomes for such children by requiring states to make reasonable efforts to place siblings together, whether in foster, kinship guardianship, or adoptive placements, unless placing them together would be contrary to their safety or well-being. If the siblings are not placed together, the agency must make reasonable efforts to ensure that the siblings maintain their connections to each other through frequent visitation or other ongoing interaction. An exception to maintaining connections is permissible only if such contact would be contrary to the safety or well-being of one or more of the children. [[11]](#footnote-11)

Fostering Connections does not specify the criteria for determining when it is contrary to a child’s safety or well-being to be placed with a sibling. The age, development, and special needs of the children may be relevant, as well as their prior history with each other. Here, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is five (5) years old and her siblings are eleven (11), eight (8), and five (5) years old. These siblings have lived, whether with their biological parents or while in foster care, essentially together for the last 5 years prior to being separated. This is essentially \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s entire life. Whenever a decision is made to separate siblings, it is imperative that reasonable efforts are made to ensure a sibling visitation plan is implemented, that reasonable efforts are made to provide the appropriate services for these siblings to address concerns of co-placement, and that reasonable efforts are made to continue recruiting for foster/adoptive homes for ALL of the siblings. Unfortunately, as illustrated in this Motion, the Department failed to comply with the Fostering Connections Act.

**CONCLUSION**

When children are taken from their parents and placed in the legal custody of the Department, Nevada law presumes that keeping them together is in their best interests. The Department has the affirmative obligation to place siblings together. This Court should not allow the Department to evade its responsibility to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and must require that the Department justify why \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ continues to be maintained separate and apart from her siblings. Accordingly, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ respectfully requests that this Court Order:

1. That the Department advises what services are being provided to these siblings to ensure any inappropriate behaviors, which are preventing co-placement, are being appropriately treated.
2. That the Department provides the Court and Counsel with placement efforts.
3. That the Department continues to recruit for foster/adoptive homes for all of the siblings.
4. That the Department develops a reunification plan to place the siblings together once a home is identified.
5. That a sibling visitation plan be implemented allowing for frequent visits.
6. That a Status Check hearing be scheduled in 60 days to reevaluate the services, placement efforts, sibling visitation plan and permanency plan for these children.

DATED this \_\_\_\_\_\_\_ day of March, 2012.

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

**AFFIDAVIT OF COUNSEL**

STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

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

1. I am a licensed practicing attorney, admitted in the State of Nevada and an attorney with FIRM appointed to represent subject minor, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. I have personal knowledge of the facts alleged herein or the facts are based on information and belief.
3. I have been \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s attorney since January 9, 2012 and have met with her on many occasions to discuss this Motion.

By:

, ESQ.

SUBSCRIBED AND SWORN to before me

this day of March, 2012 by .

NOTARY PUBLIC in and for said

County and State

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the \_\_\_\_\_\_\_ day of March, 2012, I placed a true and correct copy of the foregoing ***MOTION TO REVIEW PLACEMENT, SERVICES, AND REQUEST FOR SIBLING VISITATION ORDER***, First-Class postage prepaid, in the United States Postal Service at Las Vegas, Nevada, and addressed as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ESQ.

Deputy District Attorney Juvenile

Family Court

601 N. Pecos Road, Rm. 470

Las Vegas, Nevada 89101

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

Department of Family Services

701 N. Pecos Road, Bldg. K

Las Vegas, Nevada 89101

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

An employee of

FIRM

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.

   Legislative history gleaned from the Hearing on A.B. 42 before the Assembly Committee on Health and Human Services, 73rd Legislative Session ( March 7, 2005), indicates that this amendment was:

   “…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 of origin. The loss can negatively impact the child through his or her lifetime.” [↑](#footnote-ref-3)
4. See Exhibit A [↑](#footnote-ref-4)
5. Id. [↑](#footnote-ref-5)
6. See Exhibit B [↑](#footnote-ref-6)
7. Id. [↑](#footnote-ref-7)
8. Id. [↑](#footnote-ref-8)
9. 9. 73rd Legislative Session, Nevada Assembly Bill 42, strikethrough signifies deletions, italics signifies newly added language. [↑](#footnote-ref-9)
10. See Exhibit C. [↑](#footnote-ref-10)
11. 42 USC §671(a)(31) [↑](#footnote-ref-11)