Filed 1/25/19 In re S.W. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re S.W., A Person Coming Under the Juvenile Court Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. I.V., Defendant and Appellant.	B290638 Los Angeles County Super. Ct. No. DK18599

APPEAL from an order of the Superior Court of Los Angeles County. Frank J. Menetrez, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Erica Edelman-Benadon, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father I.V. appeals from the termination of his parental rights to his son, S.W.[1] He contends the juvenile court erred when it did not apply the relative caregiver exception to the termination of parental rights under Welfare and Institutions Code section 366.26, subdivision (c)(1)(A)[2] and identify legal guardianship by S.W.'s maternal grandmother in Washington state as S.W.'s permanent plan. Substantial evidence that the maternal grandmother—the relative caregiver—was willing to adopt S.W. supports the court's finding that the relative caregiver exception did not apply. We therefore affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND

1. *Initial detention and juvenile court's jurisdiction over S.W.*

Mother and father each have a history of abusing drugs from a young age. They met in Los Angeles. After a brief relationship, mother returned to Washington in April 2016 to live with her mother Robin, the maternal grandmother, and give birth to S.W. Mother tested positive for methadone and opiates when S.W. was born. He was treated for opiate withdrawal. She returned to Los Angeles with S.W. about two months later. Mother began leaving S.W. on the weekends with father, who had resumed his relationship with his long-term, live-in girlfriend (girlfriend).

DCFS removed baby S.W. from his parents' custody in July 2016 after it received a referral alleging father had punched

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[1] Mother is not a party to this appeal.

[2] Further statutory references are to the Welfare and Institutions Code.

girlfriend in the face and head in S.W.'s presence. A marijuana pipe and drug scales were in the home. In early August 2016, DCFS filed a section 300 petition with the juvenile court. S.W. was four months old.

The juvenile court issued emergency detention findings and ordered monitored visitation for parents. It then continued the matter to address whether it should exercise subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) because mother had an open voluntary case with the Department of Social and Health Services in Seattle, Washington. The Washington court declined to exercise jurisdiction.

In October 2016, parents waived their trial rights. The juvenile court then sustained allegations in an amended petition under section 300, subdivision (b), that S.W. was at substantial risk of harm based on mother's and father's drug use and father's and his live-in girlfriend's history of domestic violence. The court removed S.W. from parents' custody and ordered him suitably placed. The court ordered continued monitored visitation for parents. The court ordered DCFS to assess relatives for S.W.'s placement, including an investigation of Robin's home in Washington under the Interstate Compact on the Placement of Children (ICPC). Robin had told a DCFS social worker she wanted to care for S.W. She was " 'interested in having him if that's a possibility.' "

2. *Reunification period*

S.W. was placed in foster care with Mrs. C., and her husband, from his initial detention in July 2016 until mid-November 2017. He appeared "happy and well bonded" with her.

DCFS provided father with reunification services from October 2016 until October 2017 when it recommended the court terminate father's services[3] because he had made "minimal progress on his court ordered services, used methamphetamine several times and visited [S.W.] inconsistently."

During the reunification period, father participated in a methadone clinic, but not a drug treatment program. At that clinic he tested positive for methamphetamine in December 2016 and in January, April, and June 2017. He also was hospitalized in April 2017 for a methamphetamine overdose after he swallowed the drugs when law enforcement was called for a reported domestic violence incident between father and girlfriend.

Father enrolled in a parenting program, but was dismissed from the program after he missed consecutive sessions. Father regularly visited S.W. on Saturdays, however, but was sometimes late and missed some visits in the summer of 2017.

In August 2017, Robin told a DCFS social worker that if reunification failed for father "she would '100% . . . 150% . . . I would take the baby.' " She said she would adopt S.W. or pursue legal guardianship. DCFS completed a permanent plan assessment for S.W. on October 10, 2017. A social worker discussed the various permanency plan options for S.W.—including adoption and legal guardianship—with Mrs. C., the paternal grandmother, and Robin. Both Mrs. C. and Robin

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[3] The juvenile court terminated mother's reunification services at the May 2017 review hearing, but continued father's reunification services, finding he was in partial compliance with his case plan.

told social workers they wanted to adopt S.W. DCFS recommended placing S.W. with Robin in Washington.

On October 26, 2017, the juvenile court terminated father's reunification services finding no evidence of "substantive progress notwithstanding [father's] partial compliance with the case plan, which has been intermittent and sporadic." The court specifically found no "substantial probability of return" of S.W. to father by the 18-month date and set a section 366.26 hearing to determine the child's permanent plan. The court ordered S.W. placed with Robin. The court continued to allow father to have monitored visits with S.W.

3. *S.W.'s placement with Robin*

S.W. began living with Robin in Washington in November 2017. Father visited S.W. in Washington with Robin as the monitor a total of three times: over the weekend in December 2017 and January 2018 and for a week at the end of March 2018. Robin "really liked" father and reported he "was very appropriate with the child." Father also "facetimed" S.W. on the weekends.

In its report filed February 14, 2018, DCFS reported Robin was providing S.W. with appropriate care and he was "comfortable in his surroundings." In its Last Minute Information for the Court for the March 1, 2018 hearing, DCFS reported Robin was interested in adoption and was not interested in legal guardianship. The social worker reported, "[Robin] states that she loves [S.W.] and wants to provide [him] with a loving, stable and nurturing home through adoption." The social worker continued, "They have a positive mutual attachment and [S.W.] is doing well in the home of [Robin]." The report noted the rights and responsibilities of both adoption and legal guardianship had been explained to Robin and she fully understood them. Finally,

the social worker reported Robin "states that she is commit[t]ed to adopting [S.W.] and commit[t]ed to providing [him] with a permanent home."

At the March 1, 2018 hearing, the juvenile court ordered DCFS to report on father's visitation with S.W. in Washington. The Washington ICPC social worker—who helped DCFS supervise the case—contacted Robin about father's visits. The ICPC social worker reported that S.W. " 'demonstrates an emotional attachment' " to father during in-person visits. The social worker further reported, " 'Robin indicated that it is her plan to allow [father] to continue to have contact with [S.W.] following finalization of the adoption as she sees the relationship to be an important and beneficial one for [S.W.]. She would be open to an Open Adoption Agreement if the father relinquished parental rights and waived an appeal. . . . [S]he continues to be willing and able to provide permanency for [S.W.] and adopt him.' "

On March 28, 2018, the ICPC social worker reported she " 'cautioned [Robin] that [father] could be manipulative and charming while not making the significant changes that would make him a safe parent.' " The ICPC worker expressed her concern to DCFS that father appeared to have " 'successfully circumvented DCFS and has full access to [S.W.] . . . with no California DCFS oversight or monitoring.' "

4. *Termination of father's parental rights*

The juvenile court set a contested section 366.26 hearing at father's request on the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). The court held the contested hearing on April 4, 2018. It admitted into evidence DCFS's seven reports filed in October 2017 and March 2018.

Father called three witnesses, including himself, to testify about his bond with S.W. After the first witness, paternal great-grandmother, testified, the court recessed for lunch.

When the hearing resumed in the afternoon, father's counsel told the court she had received "late-breaking information" at 1:25 p.m. from Robin about her wishes as to the permanency options and believed "the unwillingness to adopt exception for reasons other than financial purposes may apply." S.W.'s counsel told the court he spoke to Robin, and she confirmed she prefers legal guardianship. When the court asked whether Robin had indicated if she was unwilling to adopt if parental rights were terminated, S.W.'s counsel responded, "No. . . . She felt that -- while she is prepared to do so, she felt that that was the only option that was available to her."

The court noted the strong statutory preference for adoption over guardianship with such a young child. The court then heard from father's remaining witnesses, the paternal grandmother and father on his own behalf.

Father's counsel then asked to have Robin testify at a continued hearing date. The court continued the hearing to April 26, 2018, and ordered DCFS to interview Robin about permanency options for S.W. and father's visits.

In its status review report filed April 5, 2018, DCFS reported the ICPC social worker observed S.W. was "well bonded" to Robin. The attached ICPC quarterly supervision report for the period covering November 2017 to January 2018 stated S.W. "is comfortable" in Robin's home and "thriving in her care."

DCFS filed an addendum report on April 26, 2018, describing its interview with Robin. DCFS reported that on April 4, 2018, the ICPC social worker told DCFS that Robin had

never expressed wanting legal guardianship over adoption. The ICPC worker stated, " 'it is my impression that [Robin] is being manipulated by . . . father and she is very sympathetic to his cause.' "

On April 4, 2018, Robin told a DCFS social worker she preferred legal guardianship. She said, " 'I thought I had to adopt him. I was told he would be adopted by someone else if I didn't. I would rather be a grandparent, but I am committed to taking care of him for the rest of my life. He will be with me for the rest of my life.' "

The ICPC worker met with Robin on April 19, 2018. She stated that father's attorney asked Robin, " 'Do you want to be "mom" or "Grandmother"?'[—]which is what resulted in [Robin] thinking legal guardianship would be preferable because she could be 'grandma.' " Robin told the ICPC worker that she wanted father to be part of S.W.'s life. The ICPC worker talked to Robin about an open adoption agreement. She also "further discussed" the differences between long-term foster care, legal guardianship, and adoption, and told Robin "that in no way was she being pressured to go forward with adoption." The ICPC worker also talked to Robin about being manipulated by father and his resistance to contacting DCFS.

A DCFS social worker emailed to Robin a pamphlet on permanency option comparisons and spoke to Robin on April 24, 2018. Robin told the social worker she was leaning toward legal guardianship, stating, " 'I prefer not to have the father's parental rights terminated because they [S.W. and father] are bonded.' " The social worker asked Robin if she had thought about an open adoption agreement, but Robin replied, " 'that would sever parental rights.' "

DCFS recommended adoption as the most appropriate permanent plan for S.W. DCFS stated, "[Robin] reports that she is not pursuing adoption because she does not want to sever the relationship between the father and [S.W.]. However, the father did not visit consistently throughout the case history and his contact with [S.W.] has been limited considering the minor's young age. Furthermore, the father declined to participate in bonding sessions with [S.W.] demonstrating that he was not invested in strengthening his relationship with [S.W.]. Thus, [DCFS] is wary and concerned about [Robin's] motivation to seek [l]egal [g]uardianship over adoption." It concluded Robin "is now unwilling to adopt the minor and seems to be focused on the father's best interest instead of providing a forever home for [S.W.]." DCFS recommended the court lift its "do not remove" order to allow S.W. to be adopted and noted Mr. and Mrs. C. "remain committed to providing [S.W.] with permanency through adoption."

The court resumed the contested hearing on April 26, 2018. The hearing was expanded to include the relative caregiver exception under section 366.26, subdivision (c)(1)(A). The court admitted into evidence the DCFS status review report and addendum report. Robin testified by telephone as a witness on behalf of father.

Robin testified she was willing to provide permanence for S.W. and preferred legal guardianship. She said she "[a]bsolutely, without a hesitation" would adopt S.W. if not allowed to be his legal guardian, but preferred legal guardianship. When asked why that was her preference, Robin responded, "Because that maintains parental rights, and I believe the bond is incredibly important to [S.W.]. He is very bonded to

his father, and I would prefer to be his grandmother than his mother. And I would prefer [father] to be his dad vers[us] some other person on the street."

When asked whether DCFS discussed permanency options with her, Robin stated that last April they "went through at a high level the different options of legal guardianship and adoption and asked me about each one and whether I was willing to provide that." She said legal guardianship was mentioned, but later when DCFS wanted to move S.W. to Washington, "they asked me if I was willing to adopt, and it gave me the impression that that was the only way I was going to get my grandson because they didn't mention legal guardianship at all. They only mentioned adoption, if I was willing to adopt, and by what they were saying and the tone of it, it made me think . . . that was the only way I could get my grandson back."

At the end of the hearing, father's counsel asked the court to find an exception to terminating father's parental rights because (1) a parent-child bond existed to the extent that terminating father's parental rights would be detrimental to S.W., and (2) a relative (Robin) living with the child was unable or unwilling to adopt for reasons other than monetary ones. S.W.'s counsel joined father's counsel in asking the court to find an exception to the termination of parental rights under the relative caregiver exception.[4]

The juvenile court found the parent-child bond exception under section 366.26, subdivision (c)(1)(B)(i), did not apply. The juvenile court also found the relative caregiver exception under subdivision (c)(1)(A) did not apply. The court determined Robin

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[4] The child's counsel did not join in this appeal.

was both willing and able to adopt S.W. and her mere preference for legal guardianship was insufficient to invoke the exception. The court also found the fact S.W. was "very well cared for" by Robin was insufficient to show his removal to be adopted would be detrimental.

Father timely appealed. He challenges the juvenile court's termination of his parental rights, arguing the court erred when it found the relative caregiver exception did not apply. He does not challenge the court's finding that the beneficial parent relationship exception did not apply.

DISCUSSION

1. *Applicable law and standards of review*

At a section 366.26 hearing, the juvenile court selects a permanent plan for the dependent child's care: adoption, legal guardianship, or long-term foster care. (§ 366.26, subd. (b); *In re Celine R.* (2003) 31 Cal.4th 45, 52-53.) Adoption is the preferred choice. (*In re Marina S.* (2005) 132 Cal.App.4th 158, 164.) Thus, once the juvenile court determines by clear and convincing evidence "that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption," unless a statutory exception applies. (§ 366.26, subd. (c)(1).) Father does not dispute the court's finding of adoptability. The only issue father raises on appeal is the applicability of the relative caregiver exception to adoption and termination of parental rights.

The relative caregiver exception to termination of parental rights applies when:

> "The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal

> or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child."

(§ 366.26, subd. (c)(1)(A).) The parent bears the burden to prove a statutory exception applies. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1119-1120.)

We review a juvenile court's factual findings made under section 366.26 for substantial evidence. (*In re D.R.* (2016) 6 Cal.App.5th 885, 891.) "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) If substantial evidence supports the juvenile court's ruling, we "must affirm the court's rejection of the exceptions to termination of parental rights under section 366.26, subdivision (c)." (*In re S.B.* (2008) 164 Cal.App.4th 289, 298.) We review issues of statutory interpretation de novo. (*In re K.H.* (2011) 201 Cal.App.4th 406, 415 (*K.H.*).)

2. *Substantial evidence supports the juvenile court's finding that the relative caregiver exception did not apply*

Father contends "the juvenile court's conclusion in this case that a preference for legal guardianship cannot support application of the relative caregiver exception was incorrect." Father relies on *K.H., supra*, 201 Cal.App.4th at p. 419, where

the juvenile court found the relative caregiver exception applied when the relative caregivers preferred legal guardianship because they wanted to remain the children's grandparents.

There, the children challenged the order selecting guardianship as their permanent plan, contending the relative caregiver exception did not apply because it required " 'concrete, appropriate circumstances' that make the relative caregiver unable or unwilling to adopt, and a relative caregiver's stated preference for guardianship over adoption is insufficient in itself to establish such circumstances." (*K.H., supra*, 201 Cal.App.4th at p. 415.) The appellate court rejected this interpretation and affirmed the juvenile court's order. In doing so, the court considered the plain language of the statute and its legislative history. (*Id.* at pp. 416-417.)

Looking at the definition of "circumstance" as " '[a] condition or fact attending an event and having some bearing upon it; a determining or modifying factor,' " the court explained, "the event at issue is the relative's inability or unwillingness to adopt the child, the cause of which must be a condition or fact, or a determining or modifying factor, i.e., a circumstance." (*K.H., supra*, 201 Cal.App.4th at p. 416.) The court further explained that under the statute the only limitation on the circumstances causing the relative's inability or unwillingness to adopt is "the relative's unwillingness to accept legal or financial responsibility for the child." (*Ibid.*) The court concluded, "The statute does not preclude the court from considering as a circumstance, as the [juvenile] court did in this case, the relative caregiver's preference for legal guardianship due to family dynamics." (*Ibid.*)

The appellate court found the legislative history supported its interpretation. The court explained that before 2008, the

exception required the relative to be " 'unable or unwilling to adopt the child because of *exceptional circumstances*, that do not include an unwillingness to accept legal or financial responsibility for the child.' " (*K.H., supra*, 201 Cal.App.4th at p. 417, italics added.) The court stated that "[i]t is apparent from the legislative history [of the amended statute] the Legislature intended that a relative caregiver's preference for legal guardianship over adoption be a sufficient circumstance for application of the relative caregiver exception as long as that preference is not due to an unwillingness to accept legal or financial responsibility for the child." (*Id.* at p. 418.)

Here, at the final section 366.26 hearing, after reading the relative caregiver exception, the juvenile court stated,

> "I think it is pretty clear that it really does mean unable or unwilling. It means what it says. It doesn't mean would prefer guardianship. It means unable or unwilling because otherwise the further condition that removal would be detrimental wouldn't really make sense. The point is just that if they are willing to adopt -- regardless what their preference might be, if they are willing to adopt, then the child would stay there and be adopted."

The court then found Robin's testimony and the statements in the DCFS reports confirmed Robin was "neither unable or unwilling to adopt." The court stated it was "not aware of a definitive interpretation in the case law," but noted a leading treatise interpreted the statute as the court did. The court then read from the treatise, " 'Under the relative guardian cutout, a mere preference for guardianship by the relative caregiver is not enough to stop the termination of parental rights for an

adoptable child. This is consistent with existing case law.' " (Reading from Seiser & Kumli, Seiser and Kumli on Cal. Juvenile Courts Practice and Procedure (2017) § 2.171[5][a], p. 2-587 (Seiser & Kumli).)[5]

Father contends the court improperly relied on the treatise when case authority—*K.H.*—existed. We do not find the juvenile court interpreted the statute incorrectly, however. The court's statements are consistent with the plain language of the statute, the starting point for statutory interpretation. (*K.H., supra*, 201 Cal.App.4th at p. 415 [" ' "[i]f the words themselves are not ambiguous, [the court] presume[s] the Legislature meant what it said, and the statute's plain meaning governs" ' "].) Just as the court in *K.H.* found the term "circumstance" unambiguous, the term "unwilling" also is unambiguous.[6] (*Id.* at p. 416.)

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[5] The 2018 edition of Seiser & Kumli contains the same passage on page 2-606. (Seiser & Kumli, *supra*, (2018) § 2.171[5][a], p. 2-606.) We note the cases cited after the quoted passage are from 2003, decided before the current form of the exception. Nevertheless, in an earlier passage the treatise refers to that legislation, stating, "Effective January 1, 2008 . . . California has made a major shift in its permanency policy for children. Now if a relative caregiver is unwilling or unable to adopt the child, but is willing and able to provide the child with a stable home through legal guardianship, and removal from the relative's home would be detrimental to the emotional well being of the child, the court shall not terminate parental rights even though there is clear and convincing evidence the child is likely to be adopted if parental rights are terminated." (*Id.* at p. 2-605.) Thus, we do not find the treatise the juvenile court consulted misstated the law.

[6] Father does not contend Robin was "unable" to adopt.

DCFS notes "unwilling" is defined as " '[r]eluctant.' " (Citing Webster's II New College Dict. (1999) p. 1211, col. 2.) We note Merriam-Webster Unabridged Dictionary defines "unwilling" as "loath, reluctant." (Merriam-Webster Unabridged Dict. <http://unabridged.merriam-webster.com/unabridged/unwilling> [as of Jan. 23, 2019].) Father defines "unwilling" as the opposite of "willing," which means, " '[d]one, given, or accepted voluntarily or ungrudgingly.' " (Citing American Heritage Dict. (5th ed. 2011) p. 1982.) He contends that if a relative caregiver "must be pressured or coerced into accepting a plan of adoption, they are 'unwilling to adopt.' " [7]

Applying the plain meaning of the statutory language, we read the first prong of the exception as applying when a relative caregiver is loath or reluctant to adopt or is involuntarily or

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[7] We recognize, as father notes, the legislative purpose behind the amendments to the current relative caregiver exception included " 'prevent[ing] caseworkers and judges, who may not fully appreciate why a relative caregiver may not want to adopt the child and may decide that such unwillingness shows a lack of commitment to the child, from pressuring the relative caregiver to adopt the child.' " (*K.H., supra*, 201 Cal.App.4th at p. 418.) As the court in *K.H.* noted, that purpose is "reflected in section 361.5, subdivision (g)(2)(A), which provides that '[a] relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.' " (*Id.* at p. 418, fn. 2.) As we discuss, substantial evidence in the record supports the juvenile court's implied finding that Robin was not coerced into accepting a plan of adoption.

grudgingly considering adoption because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child. Thus, Robin's "preference" for legal guardianship could trigger the relative caregiver exception if that preference made her "unwilling" or "unable" to adopt S.W. The juvenile court's reading of the exception as inapplicable if the relative caregiver is willing to adopt, regardless of her preference, is not inconsistent with the court's interpretation of the statute in *K.H.* We do not read *K.H.* as construing the exception to apply any time a relative caregiver expresses a mere preference for legal guardianship. The court in *K.H.* was clear that the exception could apply if the preference for legal guardianship was the circumstance that caused the relative caregiver to be unable or unwilling to adopt. (*K.H., supra*, 201 Cal.App.4th at p. 416.) There, the relative caregivers, the minors' grandparents, had consistently testified that *they were unwilling to adopt them*. (*Id.* at p. 419.) The appellate court thus found sufficient evidence to satisfy that element of the caregiver exception. (*Ibid.*)

Here, in contrast, Robin affirmatively stated she wanted to adopt S.W. throughout the proceedings. The juvenile court specifically found her testimony and the statements in the DCFS reports confirmed Robin was not "unwilling to adopt," i.e., not loath or reluctant to adopt or seeking adoption involuntarily or grudgingly. The record substantially supports this finding.

Robin wanted to care for S.W. since the court first assumed jurisdiction over him in 2016. In 2017, before the court terminated father's reunification services, DCFS explained the different permanency plan options to Robin, including adoption and legal guardianship, and Robin stated she wanted to adopt S.W. during this discussion. Before the March 1, 2018 section

366.26 hearing, DCFS again reported it had explained "[t]he legal, financial, emotional and physical rights and responsibilities" of both legal guardianship and adoption to Robin. Robin stated she understood them and was "committed to adopting" S.W. and providing him "a permanent home." And, in its report filed April 2, 2018, DCFS reported Robin " 'continues to be willing and able to provide permanency for [S.W.] and adopt him.' " As late as early March 2018, Robin had told the ICPC social worker in Washington that " '[s]he would be open to an Open Adoption Agreement if the father relinquished parental rights and waived an appeal.' "

It was not until the second half of the April 4, 2018 contested section 366.26 hearing that anyone received the "late-breaking information" that Robin now preferred legal guardianship to adoption. At the April 26, 2018 continued section 366.26 hearing, she testified she preferred legal guardianship because it would maintain parental rights and she preferred to be S.W.'s grandmother and for father to be his "dad." Yet, she also testified she "[a]bsolutely, without a hesitation" would adopt S.W. if not allowed to be his legal guardian.

In contrast, the grandfather in *K.H.* testified he "was not willing to adopt the children if the court ordered adoption as the permanent plan" due to family dynamics. He "admitted there was nothing that precluded him from being able to adopt the children if he wanted to and the only reason he would not adopt them was because he was unwilling to do so." (*K.H., supra*, 201 Cal.App.4th at p. 412.) The grandparents wanted to remain the children's grandparents (*id.* at pp. 412-413), like Robin, but never said they were willing to adopt as Robin had—both before the section 366.26 hearing and during it.

Thus, the juvenile court reasonably could infer Robin was not reluctant to adopt S.W. based on the evidence, even though she now preferred legal guardianship. In other words, the record supports the court's implied finding that Robin's new preference did not render her willingness to adopt S.W. involuntary.

Substantial evidence similarly supports the court's implied finding that Robin was not coerced to adopt S.W. The record indicates DCFS informed Robin of her options and she chose adoption. She admitted DCFS went through the options with her "at a high level." She also testified, however, that when DCFS wanted to place S.W. with her, "they asked me if I was willing to adopt," and she believed "that was the only way I could get my grandson back." We can infer from the record that the juvenile court discounted this statement.

Robin did not raise legal guardianship as her preference until after she spoke to father's attorney sometime around the April 4, 2018 hearing. At the October 26, 2017 hearing, when the court ordered S.W. placed with Robin, no one said Robin had changed her mind about adoption. As DCFS notes, Robin received notice that on March 1, 2018, the court would consider DCFS's recommendation to terminate father's parental rights and implement a plan of adoption, but did not contact DCFS to say she was unwilling to adopt S.W. DCFS stated its concerns that father was manipulating Robin in its report to the court. It also reported that the ICPC social worker had cautioned Robin in March 2018 and again on April 19, 2018, that father " 'could be manipulative and charming.' " And, DCFS reported the ICPC worker's concern that Robin " 'is pretty enmeshed with the father.' " DCFS stated it was " 'wary and concerned about [Robin's] motivation to seek [l]egal [g]uardianship over

adoption.' " Robin's early and repeated commitment and the eleventh-hour nature of her stated preference for legal guardianship supports a finding that she had voluntarily agreed to adopt S.W. and was not coerced by DCFS to do so.

The juvenile court's role is to assess the credibility of witnesses and resolve conflicts in the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52.) We cannot reweigh evidence, substitute our judgment for that of the juvenile court, or second-guess the court's credibility determinations. (*Id.* at pp. 52-53.) Substantial evidence supports the court's finding Robin's "late-breaking" statements that she preferred legal guardianship did not establish that she no longer was willing to adopt S.W., making the relative caregiver exception inapplicable.

The juvenile court also found father did not establish the final element of the exception, that removing S.W. from Robin's care would be detrimental to the emotional well-being of S.W. Having concluded substantial evidence supports the juvenile court's finding Robin was not unwilling to adopt S.W., we need not address father's contention that the evidence compelled a finding that removing S.W. from Robin would emotionally harm S.W.

We note the juvenile court's findings do not require S.W. be removed from Robin. At the end of the April 26, 2018 hearing, the court ordered a progress hearing to address whether Robin should be designated a prospective-adoptive parent. That determination will be made on remand and, as we said, under section 361.5, subdivision (g)(2)(A), a relative caregiver's preference for legal guardianship over adoption may not constitute *the sole basis* for recommending removal of the child

for purposes of adoptive placement unless because of an unwillingness to take legal or financial responsibility of the child.

DISPOSITION

The juvenile court's order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.