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BISHOP, J., concurring. Although I agree with part I of the majority's opinion and its conclusion that the trial court improperly rendered summary judgment in favor of the defendants Farmington Sports Arena, LLC, Dimensional Technology Group, LLC, and Paul DiTommaso, Jr.,¹ I write separately because I believe that, in part II of its opinion, the majority misinterprets the basis of the court's decision and, in suggesting that a trial court's evidentiary rulings in connection with a summary judgment procedure are inevitably subject to a plenary standard of review, the majority invites deviation from our well established decisional law.

In response to the defendants' motions for summary judgment, the court determined that the plaintiff, Karen DiPietro, failed to establish the presence of a genuine issue of material fact sufficient to reach a jury on the basis that her expert, Benno M. Nigg, would not be able to offer evidence concerning the applicable standard of care and would not be able to testify that the defendants had prior notice of any alleged defect in the soccer playing surface. In addressing the plaintiff's claim on appeal concerning this issue, the majority characterizes the court's decision as a ruling on the admissibility of Nigg's testimony. In granting the defendants' motions for summary judgment, however, the court explicitly stated that it was assuming, for purposes of ruling on the motions, that Nigg's conclusions were valid and persuasive. The court found, nevertheless, that Nigg's testimony was insufficient because he was not going to be able to testify concerning the standard of care or notice of the alleged defect, and the plaintiff had presented no other evidence in that regard. In other words, in this part of its decision, the court determined that Nigg's testimony was legally inadequate, not inadmissible. Indeed, the court determined that the plaintiff could not satisfy her burden of proof to sustain a negligence action even with Nigg's testimony. Because the court explicitly credited Nigg's testimony, I do not think that it can fairly be read as excluding it in regard to the issues of notice and the standard of care.

In rendering summary judgment in favor of the defendants, the court also appears to have determined that Nigg's testimony would be inadmissible at trial due to his lack of personal knowledge regarding the circumstances of the incident giving rise to the alleged injuries to the plaintiff's minor daughter, Michelle DiPietro (Michelle). My difficulty with the majority's response to this aspect of the court's ruling is the majority's suggestion that our review of any determination of admissibility by a trial court in a summary judgment context should be plenary. In making this assertion, I believe the majority overstates its point as applied to

the procedural facts of this case, and, in the process, unnecessarily casts doubt on our bedrock jurisprudence that a trial court's evidentiary rulings are, generally, subject to the more deferential standard of review for an abuse of discretion no matter the context in which they are made. See *Turner v. Croman*, 52 Conn. App. 445, 726 A.2d 1168 (1999). In short, not every ruling on the admissibility of evidence made by a trial court in conjunction with a summary judgment hearing is subject to plenary review. Furthermore, this case presents no reason for this court to stray from our well established jurisprudence that a trial court's evidentiary rulings, to the extent it is proper for the court to have made evidentiary rulings, are subject to a more deferential abuse of discretion standard despite the context in which they arise.

Here, it is not the court's ruling that Nigg's testimony would be inadmissible because of his lack of personal knowledge that we review, but, rather, we assess the correctness of the court's making such an evidentiary ruling in the face of conflicting evidence regarding Nigg's personal knowledge of the circumstances of Michelle's accident. "In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Sherman v. Bristol Hospital, Inc.*, 79 Conn. App. 78, 87, 882 A.2d 1254 (2003). Because the court must, when deciding a motion for summary judgment, accept all facts alleged by the nonmoving party as true, it would be inappropriate to engage in weighing the evidence or the testimony submitted. *Roy v. Bachmann*, 121 Conn. App. 220, 223, 994 A.2d 676 (2010) (trial court does not sit as trier of fact when ruling on motion for summary judgment). Thus, when there is a factual issue in dispute, the court should not resolve that issue on summary judgment, but, rather, that issue must be left to the fact finder for resolution.

In the case at hand, contrary to the defendants' assertions and the trial court's finding, Nigg's affidavit could reasonably support the conclusion that he received personal information from Michelle's family as to the circumstances of the accident. Rather than crediting this evidence as it was required to do, the trial court, instead, decided a material fact in concluding that Nigg had insufficient personal knowledge to permit him to testify. In doing so, the court improperly resolved a factual dispute rather than confining itself to whether such a dispute exists so as to survive the summary judgment motions. Consequently, I believe that we should accord plenary review to the court's determination that Nigg is not competent to testify, not on the basis that the court's evidentiary ruling should be accorded plenary review, but, rather, because the court was legally incorrect in engaging in such an assessment when the evidence was in conflict. Because the court acted beyond its scope of authority in this manner, its ruling is legally

incorrect. Thus, although I agree with the majority that we should accord plenary review to the trial court's determinations in this summary judgment matter, I cannot share the majority's broad assertion that any review of a trial court's admissibility rulings in a summary judgment matter should be plenary simply because they arise in a summary judgment context. Accordingly, I concur with the outcome reached by the majority but not with its analysis in all respects.

¹ Although the court also granted the motion for summary judgment filed by DiTommaso Associates, LLC, for the purposes of this concurrence we refer to only Farmington Sports Arena, LLC, Dimensional Technology, LLC, and Paul DiTommaso, Jr., as the defendants.
