PALMER, J., dissenting. I agree generally with Justice Eveleigh's dissent. I write separately, however, to explain the crux of my disagreement with the majority's conclusion that the trial court's determination that it would be in Eric's[1] best interest to deny visitation with the plaintiff, Michael DiGiovanna, "conflicts" with the standard set forth in *Roth* v. *Weston*, 259 Conn. 202, 789 A.2d 431 (2002), for determining when third party visitation may be granted under General Statutes § 46b-59. Although it is true, as the majority maintains, that the trial court expressly found that the plaintiff had met his burden of proof under *Roth*, that finding cannot be viewed in a vacuum; rather, it must be considered together with the trial court's subsequent finding that it was not in Eric's best interest to continue a relationship with the plaintiff. It is apparent that the trial court believed that, for purposes of applying *Roth*, it was bound to consider the *Roth* requirements without regard to whether the harm that Eric would suffer if deprived of visitation with the plaintiff—a deprivation that the court found satisfied the *Roth* standard—was greater or lesser than the harm that Eric would suffer if the plaintiff was permitted visitation. It also is clear, however, that the trial court found that the harm that Eric would suffer if visitation were ordered was greater than the harm that he would suffer if visitation were not ordered. Viewing the court's *Roth* analysis from that perspective, it is evident that, on the basis of the trial court's factual findings—none of which is clearly erroneous—the court effectively found that, but for the predictable negative reaction of Eric's mother, Donna St. George,[2] the defendant, to the plaintiff's visitation, the *Roth* requirements had been met. Although I believe that it would have been preferable for the court to have viewed the visitation question as two sides of the same coin—if the court had considered the issue in that manner, it would have concluded that the *Roth* standard had *not* been met—I also am persuaded, on the basis of the totality of its findings and analysis, that the court reasonably rejected the plaintiff's application for visitation upon consideration of all the relevant facts and circumstances.

In *Roth*, this court reaffirmed that "[t]he constitutionally protected interest of parents to raise their children without interference undeniably warrants deference and, absent a powerful countervailing interest, protection of the greatest possible magnitude. . . . Consequently, interference is justified only when it can be demonstrated that there is a compelling need to protect the child from harm. In the absence of a threshold requirement of a finding of real and substantial harm to the child as a result of the denial of visitation, forced intervention by a third party seeking visitation is an

unwarranted intrusion into family autonomy." (Citations omitted.) Id., 228–29. Thus, we emphasized that the dispositive question for purposes of third party visitation is not whether the child will be harmed if visitation is granted; the issue, instead, is whether the child will be significantly harmed if visitation is *denied*. Id., 238. Furthermore, the petitioner "must prove [that the child will be harmed if visitation is denied] by clear and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation." Id., 235. In the present case, although the court found that Eric would suffer harm if visitation with the plaintiff were denied, the trial court also found that "real damage will come" to Eric if visitation were granted—a finding supported by the testimony of the two court-appointed psychologists and Eric's guardian ad litem. I therefore agree with the guardian ad litem's statement to this court that the trial court's memorandum of decision, although not a model of clarity, "is consistent with the recommendations and testimony" provided by the guardian ad litem at trial. At that time, the guardian ad litem "recommended that no further attempts be made to re-establish the relationship between the plaintiff and [Eric]" because "there is more turmoil and chaos and trouble in [Eric's] life because of the ongoing . . . attempt to have an ongoing relationship [with the plaintiff] . . . than there would be if the relationship were just stopped." (Internal quotation marks omitted.) In essence, that is what the trial court found, albeit only after applying the *Roth* standard from the standpoint of the harm that would befall Eric if the plaintiff were denied visitation and without regard to the harm that would befall Eric if the plaintiff were granted visitation.

Finally, I wish to note that there is nothing in the record to suggest that the defendant's inability to cope with the plaintiff's requested visitation, and the resulting high likelihood that the defendant would experience an extremely negative reaction to such visitation, is in any way a ploy or stratagem devised by the defendant to thwart the plaintiff's efforts to obtain visitation with Eric. It is no doubt, for that reason alone, that this is a very unusual case. In any future case, however, the court is free to reject the bona fides of similar evidence if, in contrast to the present case, it appears that the parent objecting to visitation under *Roth* has threatened to react poorly to an order of visitation primarily for the purpose of defeating visitation.

I therefore conclude, contrary to the decision of the majority, that the judgment of the trial court denying visitation should be affirmed. Accordingly, I respectfully dissent.

[1] Eric is the son of the defendant, Donna St. George.

[2] See footnote 1 of this opinion.