SCHALLER, J., concurring. Although I agree with the result, I respectfully disagree with the analysis set forth in the majority opinion with respect to the motion to dismiss filed by the defendant, Emma Norton. In view of the events that occurred during the proceedings in the trial court, I believe that the plaintiffs, Gene Fennelly and Sharon Fennelly, appropriately were given an evidentiary hearing in order to supplement their pleading in their effort to satisfy the jurisdictional requirements established by our Supreme Court in *Roth* v. *Weston*, 259 Conn. 202, 789 A.2d 431 (2002). I do agree with my colleagues that the trial court improperly considered the merits of the plaintiffs' application for visitation with their grandchildren before deciding whether the jurisdictional requirements of *Roth* were satisfied. After reviewing both the pleading and the evidence presented at the hearing, I conclude that the plaintiffs failed to meet the second *Roth* jurisdictional requirement. I, therefore, concur in the result reached by the majority.

At the outset, I note my agreement with the majority's accurate recitation of the precedent that controls the case before us. My disagreement lies with the majority's conclusion that the trial court improperly "accepted the invitation of the plaintiffs' counsel to hear testimony from the plaintiffs to 'establish the facts.' " Given the procedural history and facts of this case, the court should have considered, not only the pleading, but the evidence presented at the hearing in order to determine whether the plaintiffs met the *Roth* jurisdictional requirements. If, and only if, the plaintiffs met that burden should the court have proceeded to the merits of the plaintiffs' application for visitation.

In order to explain my departure from the reasoning of the majority, I must expand on the factual and procedural history of this case. On September 7, 2005, the plaintiffs began this proceeding by serving the defendant with an "Order to Attend Hearing and Notice to the Respondent," a "Custody/Visitation Application," a "Motion for Orders before Judgment in Family Case" and an "Automatic Court Orders." The "Custody/Visitation Application," which is designated JD-FM-161 Rev. 2-04, is provided by the judicial branch and available in the Superior Court. This form contains citations to General Statutes §§ 46b-56 and 46b-61, as well as Practice Book §§ 25-3, 25-4 and 25-5. The plaintiffs sought visitation with their grandchildren, the defendant's two minor children, Ciara and Aiden. The plaintiffs selected "box g" on the form, which stated that "Connecticut has the authority to decide this case and should decide this case because . . . [t]he applicant has/had a relationship with the child(ren) that is similar in nature to a parent-child relationship and denial of visitation would

cause real and significant harm to the child(ren)."[1]

In a motion filed September 26, 2005, the defendant moved to dismiss the application "for subject matter jurisdiction" pursuant to Practice Book §§ 10-30[2] and 10-31 (a).[3] In her memorandum of law, the defendant argued that "[t]he Court lacks subject matter jurisdiction over the plaintiffs' complaint . . . because it fails, in all respects, to specifically allege the necessary facts. In particular, the complaint contains no specific instances to support a parent-like relationship with the children. It also does not contain any specific instances to support the claim that the lack of visitation will cause the children to suffer real and substantial emotional harm." The plaintiffs did not file an opposition to the defendant's motion. See Practice Book § 10-31 (b).[4] The court interpreted the plaintiffs' application to be a petition seeking visitation under General Statutes § 46b-59[5] and proceeded on that basis. Neither the court nor the defendant challenged the plaintiffs' use of the § 46b-56 application for their purposes.

The court, on November 3, 2005, held a hearing on the defendant's motion. Counsel for the plaintiffs stated at the outset that "the issue in this case will be whether or not my clients satisfy the requirements of *Roth* . . . . In essence, it boils down to whether they are on the right side of the continuum with regard to the two threshold items to justify the limited intrusion in this case." The plaintiffs' counsel then began to explain the reasons for the request for visitation. At this point, counsel for the defendant objected. "I'm not sure that this is relevant. *I mean, if they want to testify as to the threshold requirement, then let them start their evidence, but their reasons why don't matter at this point in time.* They need to meet a threshold requirement before this court can determine if it has jurisdiction over the matter, and there's a motion to dismiss pending before the court that addresses those issues, and before we start getting into factual issues of why they want to intrude on my client's rights, they need to prove to this court that they have standing and that the court should take jurisdiction over it. So, I object to [the plaintiffs' counsel's] facts that he's presenting to the court at this time." The plaintiffs' counsel subsequently indicated that he was "very well prepared to put on my clients to establish the two prongs of the *Roth* . . . case."

I

The applicable legal principles relating to subject matter jurisdiction are well established. It is axiomatic that "[a] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . . The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal." (Internal quotation marks

omitted.) *Pine* v. *Dept. of Public Health*, 100 Conn. App. 175, 180, 917 A.2d 590 (2007); see also *Batte-Holmgren* v. *Commissioner of Public Health*, 281 Conn. 277, 283, 914 A.2d 996 (2007); *West Farms Mall, LLC* v. *West Hartford*, 279 Conn. 1, 15 n.8, 901 A.2d 649 (2006). I agree with the majority that once "the issue of subject matter jurisdiction is raised, it must be immediately acted upon by the court." (Internal quotation marks omitted.) *Federal Deposit Ins. Corp.* v. *Peabody, N.E., Inc.*, 239 Conn. 93, 99, 680 A.2d 1321 (1996); see also *Robbins* v. *Van Gilder*, 225 Conn. 238, 255 n.1, 622 A.2d 555 (1993) (*Berdon, J.*, dissenting); *Gurliacci* v. *Mayer*, 218 Conn. 531, 545, 590 A.2d 914 (1991). A determination in favor of jurisdiction, therefore, must precede any consideration of the merits. See *Fullerton* v. *Administrator, Unemployment Compensation Act*, 280 Conn. 745, 754, 911 A.2d 736 (2006); see also *Shockley* v. *Okeke*, 92 Conn. App. 76, 85, 882 A.2d 1244 (2005) ("Once it becomes clear that the trial court lacked subject matter jurisdiction to hear the . . . complaint, any further discussion of the merits is pure dicta. . . . Lacking jurisdiction, the court should not deliver an advisory opinion on matters entirely beyond [its] power to adjudicate. . . . Such an opinion is not a judgment and is not binding on anyone." [Citations omitted; internal quotation marks omitted.]), appeal dismissed, 280 Conn. 777, 912 A.2d 991 (2007).

The standard of review applicable to this case is well established. "In an appeal from the granting of a motion to dismiss on the ground of subject matter jurisdiction, this court's review is plenary. A determination regarding a trial court's subject matter jurisdiction is a question of law. When . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record. . . . Jurisdiction of the subject matter is the power [of the court] to hear and determine cases of the general class to which the proceedings in question belong. . . . A court has subject matter jurisdiction if it has the authority to adjudicate a particular type of legal controversy." (Internal quotation marks omitted.) *Francis* v. *Chevair*, 99 Conn. App. 789, 791, 916 A.2d 86 (2007); see also *Ventres* v. *Goodspeed Airport, LLC*, 275 Conn. 105, 135, 881 A.2d 937 (2005), cert. denied, U.S. , 126 S. Ct. 1913, 164 L. Ed. 2d 664 (2006); *Chiulli* v. *Zola*, 97 Conn. App. 699, 703–704, 905 A.2d 1236 (2006).

The scope of a motion to dismiss vis-a-vis subject matter jurisdiction also is well settled. "Although subject matter jurisdiction may be challenged at any stage of the proceedings, it has been addressed almost exclusively through a motion to dismiss. A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter

alia, whether, on the face of the record, the court is without jurisdiction. . . . When a . . . court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) *Bellman* v. *West Hartford*, 96 Conn. App. 387, 393, 900 A.2d 82 (2006). Put another way, "[p]roperly granted on jurisdictional grounds, it essentially asserts that, as a matter of law and fact, a plaintiff cannot state a cause of action that is properly before the court." *Egri* v. *Foisie*, 83 Conn. App. 243, 247, 848 A.2d 1266, cert. denied, 271 Conn. 931, 859 A.2d 930 (2004).

Finally, I note that "[o]ur Supreme Court has determined that when ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . ." *Bailey* v. *Medical Examining Board for State Employee Disability Retirement*, 75 Conn. App. 215, 219, 815 A.2d 281 (2003); see also *184 Windsor Avenue, LLC* v. *State*, 274 Conn. 302, 304 n.3, 875 A.2d 498 (2005); *Neiman* v. *Yale University*, 270 Conn. 244, 250, 851 A.2d 1165 (2004). Simply put, "[i]n determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Pritchard* v. *Pritchard*, 281 Conn. 262, 275, 914 A.2d 1025 (2007).

II

Turning to the facts of the present case, the defendant moved to dismiss the plaintiffs' request for visitation with the defendant's minor children, Ciara and Aiden. At the November 3, 2005 hearing, the threshold issue before the court was whether the plaintiffs had met the two jurisdictional requirements mandated by *Roth*. The Supreme Court stated in *Roth*: "First, the petition must contain specific, good faith allegations that the petitioner has a relationship with the child that is similar in nature to a parent-child relationship. The petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. As we have stated, that degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by [General Statutes] §§ 46b-120 and 46b-129, namely, that the child is neglected, uncared-for or dependent. The degree of specificity of the allegations must be sufficient to justify requiring the fit parent to subject his or her parental judgment to unwanted litigation. Only if these specific, good faith allegations are made

will a court have jurisdiction over the petition." (Internal quotation marks omitted.) *Roth* v. *Weston*, supra, 259 Conn. 234-35.

Rather than limit the consideration solely to the pleading filed by the plaintiffs, the defendant acquiesced by indicating that she had no objection to letting the plaintiffs present evidence in order to buttress the claims alleged in the application for the purposes of whether the jurisdictional requirement had been met. Counsel for the defendant stated: "*I mean, if they want to testify as to the threshold requirement, then let them start their evidence*, but their reasons why don't matter at this point in time. They need to meet a threshold requirement before this court can determine if it has jurisdiction over the matter, and there's a motion to dismiss pending before the court that addresses those issues, and before we start getting into factual issues of why they want to intrude on my client's rights, they need to prove to this court that they have standing and that the court should take jurisdiction over it." (Emphasis added.) The defendant not only failed to object to the proceeding but actually invited such testimony to enable the court to make the required ruling under *Roth*.[6]

It is well established in our jurisprudence that an evidentiary hearing may be appropriate with respect to a motion to dismiss. "When issues of fact are necessary to the determination of a court's jurisdiction, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses." (Internal quotation marks omitted.) *Fairfax Properties, Inc.* v. *Lyons*, 72 Conn. App. 426, 432, 806 A.2d 535 (2002); see also *Golodner* v. *Women's Center of Southeastern Connecticut, Inc.*, 281 Conn. 819, 826, 917 A.2d 959 (2007) (when resolution of disputed fact necessary to determine existence of standing raised by motion to dismiss, hearing may be held in which evidence taken); *Gordon* v. *H.N.S. Management Co.*, 272 Conn. 81, 92, 861 A.2d 1160 (2004); *Schaghticoke Tribal Nation* v. *Harrison*, 264 Conn. 829, 833, 826 A.2d 1102 (2003); *Lawton* v. *Weiner*, 91 Conn. App. 698, 705–706, 882 A.2d 151 (2005) (hearing *required* only when motion to dismiss raises genuine issue of material fact); *Capasso Restoration, Inc.* v. *New Haven*, 88 Conn. App. 754, 761, 870 A.2d 1184 (2005) (same).

Neither *Roth* nor *Crockett* v. *Pastore*, 259 Conn. 240, 789 A.2d 453 (2002), decided specifically that our trial courts would be *prohibited* from allowing petitioning parties to supplement their pleadings under these circumstances. In fact, *Roth*, *Crockett* and *Clements* v. *Jones*, 71 Conn. App. 688, 803 A.2d 378 (2002), specifically allowed, in effect, supplementation and consideration of the evidence placed before the trial court because of manifest unfairness, in view of the then

newly stated threshold requirements. In other words, *Roth*, *Crockett* and *Clements* did not categorically prohibit supplementation, nor did they indicate that no other type of "manifest unfairness" would warrant doing so. This interpretation is supported by the fact that the defendant, the type of party whom *Roth* and its progeny sought to protect from unwanted intrusion by relatives and nonrelated parties alike, encouraged both the plaintiffs and the court to proceed down this path.[7] I conclude, therefore, that the proper course of action under those circumstances was for the court to consider both the plaintiffs' pleading and the evidence presented at the hearing in order to determine if the threshold requirements of *Roth* were met. Because the court improperly bypassed this prerequisite and decided the merits of the plaintiffs' request for visitation, we must resolve the issue of whether the court had jurisdiction. This is proper because a determination of subject matter jurisdiction, as I previously noted, presents a question of law, subject to plenary review on appeal, and must be determined in every case, once the issue has been raised. Accordingly, I will examine the events of the November 3, 2005 hearing.

At the conclusion of the hearing, the court stated that the relationship between the plaintiffs and the minor children "might have been [similar to a parent-child relationship] some years ago, but clearly it is not at this date. And there also has to be clear and convincing evidence that denial of visitation will cause real and significant harm to the children. . . . As I say, I believe that grandparent visitation is a good thing, but I don't think that I have heard enough evidence here, including the allegations of abuse,[8] which I don't believe rose to any kind of proof that would be required in a court in this state to be found [an] abuse of [the] children."

The basis for the court's denial of the plaintiffs' motion for visitation appears to be the testimony of the plaintiffs and Kristin Ericcson, the aunt of the minor children. Gene Fennelly testified that he had a parent-child relationship with his grandchildren.[9] This relationship began in April, 1997, when the defendant, Stephen Fennelly, who is the father of the children, and Ciara moved into the home of Ericsson and her husband in New Hampshire. This living arrangement continued until August, 1998. During this period of time, Gene Fennelly visited Ciara on a daily basis, anywhere from fifteen minutes to several hours.

In August, 1998, the defendant relocated to Ansonia to attend school on a full-time basis, and Stephen Fennelly and Ciara moved into the plaintiffs' home, which also was in New Hampshire. Gene Fennelly would get Ciara ready for day care every morning during the workweek and, along with his wife and son, put her to bed at night. The three adults also provided discipline and training for Ciara. Gene Fennelly also afforded financial

support during this time, including establishing a bank account for Ciara.[10] Gene Fennelly indicated that he also provided love to Ciara, which she returned.

In January, 1999, Stephen Fennelly and Ciara joined the defendant in Ansonia. Gene Fennelly maintained his relationship with Ciara by visiting on weekends, both in Connecticut and in New Hampshire. He also spoke with Ciara on the telephone during the week. These discussions pertained to her schoolwork, the events of her day and plans for seeing each other again. He continued to display his affections for Ciara, which she reciprocated.

In August, 2000, Aiden was born, and Gene Fennelly saw him "at least every three weeks." According to Gene Fennelly, whenever Aiden saw him, he immediately wanted to be with his grandfather, bypassing any other adults who were present. Gene Fennelly also stated that he treated the defendant "like a daughter."

In 2003 and 2004, Stephen Fennelly's drug problem returned.[11] Although the plaintiffs initially supervised Stephen Fennelly's visits with the minor children, the defendant requested that this arrangement end. The plaintiffs attempted to initiate contact with the children. For example, in July, 2004, the plaintiffs drove to Connecticut to deliver birthday presents to Ciara. They waited at the defendant's residence, and when she arrived, Aiden ran over to Gene Fennelly. After taking the children inside the residence, the defendant expressed her strong displeasure with the plaintiffs. The minor children then came outside and spent about ten minutes with the plaintiffs. Aiden wanted to show Gene Fennelly his new room, but the defendant refused to allow this. Ciara would not look at the plaintiffs and did not open the wrapped presents. The defendant indicated that the visit was over, and Aiden "jumped off the stairs and into [Gene Fennelly's] arms," saying that he missed him and loved him. The defendant pulled Aiden away and told him to go inside.

A similar event occurred in the fall of 2004. The plaintiffs had telephoned the defendant and asked to see the minor children under any circumstances. The defendant had refused this request. The plaintiffs decided to attend one of Ciara's soccer games in Connecticut. They approached the defendant and Aiden. When the defendant saw the plaintiffs, she stated that she did not want them at the game. Aiden exclaimed that he wanted to see his grandfather, jumped into his arms and asked why he had not called or visited. The defendant placed her arms on Aiden and pulled him away. Gene Fennelly described the defendant as being "furious."

Gene Fennelly also stated that in early 2005, Stephen Fennelly had a supervised visit with the children at Central Connecticut State University. Gene Fennelly waited outside. When Aiden exited the building, he saw

his grandfather and ran toward him. The defendant restrained Aiden and told him to get into her motor vehicle. Aiden began crying and stated that he wanted to see "grampy."

Sharon Fennelly testified that she had a "terrific relationship" with Ciara. She often picked her up from preschool and took her grocery shopping, to the park and for ice cream. She also would feed Ciara dinner, read to her at night and put her to bed. Ciara asked her questions about "growing up" and the types of activities she would be able to do when she reached a certain age. After Ciara moved to Connecticut, Sharon Fennelly maintained contact with Ciara. Finally, Ericsson testified that she had observed the plaintiffs take care of Ciara, who was always very excited to spend time with them.

III

The threshold question for this court is whether, on the basis of the pleading and the facts presented at the evidentiary hearing, the plaintiffs met their initial burden of establishing the *Roth* jurisdictional requirements. On the basis of my review of the record, I must conclude that the plaintiffs failed to meet the second part of the *Roth* test.[12] As noted previously, "[t]he petition must also contain specific, good faith allegations that denial of the visitation will cause real and significant harm to the child. . . . [T]hat degree of harm requires more than a determination that visitation would be in the child's best interest. It must be a degree of harm analogous to the kind of harm contemplated by §§ 46b-120 and 46b-129, namely, that the child is neglected, uncared-for or dependent. (Internal quotation marks omitted.) *Roth* v. *Weston*, supra, 259 Conn. 235.

In the present case, the claims of harm do not rise to the "admittedly high hurdle" created by *Roth*. Id., 229. The plaintiffs' allegations and testimony, in fact, support a type of "harm" not recognized by *Roth* and its progeny, that is, harm to children from deprivation of a close relationship with family members who have been an integral part of their lives. Even if maintaining such a relationship might be in a child's best interest, the virtual neglect test of *Roth* does not acknowledge it. Only the type of harm that is similar to neglect or uncared for status is recognized. The evidence of "harm" produced by the plaintiffs does not directly address the *Roth* type of harm.[13] With respect to Ciara, the allegations of harm consisted of testimony that in July, 2004, she did not want to open her birthday gifts and that she did not actively respond to the plaintiffs' questions.[14] Sharon Fennelly also claimed that when Ciara was younger, she would be in fear when the defendant screamed or yelled at her.

With respect to Aiden, the plaintiffs offered slightly

more evidence of harm in support of their application. Gene Fennelly testified that whenever Aiden saw him, he would become excited and attempt to move toward his grandfather. This would agitate the defendant, and she would restrain the child and raise her voice. These actions caused Aiden to be hurt and upset. This happened on several occasions, and each time, Aiden would be visibly disturbed when he was restrained from being with his grandfather.

Even if I were to consider, in addition to the explicit testimony of the plaintiffs and Ericsson, the implicit suggestion of the plaintiffs that the children were harmed by the lack of contact with their grandparents, it is my view that such harm falls well short of the standard enunciated in *Roth*. These assertions, express and implicit, simply do not amount to the requisite level of real and significant harm, i.e., neglect, uncared for or dependent, that our Supreme Court has stated is necessary to satisfy the second requirement set out in *Roth*. As a result of the failure to satisfy this requirement, the holding of *Roth* applies, and the court lacked subject matter jurisdiction to consider the application for visitation filed by the plaintiffs.

I respectfully concur in the judgment.

[1] The plaintiffs also indicated on the form that "Connecticut is the home state of the child(ren) at the time of the filing of this case. . . . The child(ren) [have] lived in Connecticut for the past six months, or from birth if the child is younger than six months old. . . . The child(ren) and at least one parent have a significant connection to Connecticut and there is substantial evidence in Connecticut concerning the child's present or future care, protection, training and personal relationships."

[2] Practice Book § 10-30 provides: "Any defendant, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of an appearance. Except in summary process matters, the motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs. Any adverse party may, within ten days of the filing of the motion with the court, file a request for extension of time to respond to the motion. The clerk shall grant the request and cause the motion to appear on the short calendar not less than thirty days from the filing of the request."

[3] Practice Book § 10-31 (a) provides: "The motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, and (5) insufficiency of service of process. This motion shall always be filed with a supporting memorandum of law, and where appropriate, with supporting affidavits as to facts not apparent on the record."

[4] A better and more prudent course of action for the plaintiffs would have been to file a memorandum of law objecting to the defendant's motion to dismiss. See Practice Book § 10-31 (b); see also Practice Book § 25-13 (b). Although some sections of our rules of practice previously mandated such a memorandum of law to be submitted, neither Practice Book §§ 10-31 (b) nor § 25-13 (b) contain such a requirement. For example, Practice Book § 155, the predecessor to Practice Book § 10-42, stated that "[a]n adverse party who fails timely to file such a memorandum pursuant to this section shall be deemed by the court to have consented to the granting of the motion." See *Hughes* v. *Bemer*, 200 Conn. 400, 402, 510 A.2d 992 (1986). This provision is absent from both Practice Book §§ 10-31 and 25-13.

Moreover, our Supreme Court has previously "afforded trial courts discretion to overlook violations of the rules of practice and to review claims brought in violation of those rules as long as the opposing party has not raised a timely objection to the procedural deficiency." *Schilberg Integrated Metals Corp.* v. *Continental Casualty Co.*, 263 Conn. 245, 273, 819 A.2d 773 (2003). The record does not reveal that the defendant ever raised the issue

of the plaintiffs' failure to file an objection. Further, the defendant's counsel specifically invited the plaintiffs to present evidence at the hearing with respect to the *Roth* requirements. In other words, the defendant did not object to allowing the plaintiffs to remedy the deficiency in their pleading that served as the basis for the defendant's motion to dismiss. In the absence of any objection by the defendant on this basis, or any appellate case law making such a filing mandatory, this oversight by the plaintiffs is not fatal to their claims. See generally *Doe* v. *Board of Education*, 76 Conn. App. 296, 298 n.5, 819 A.2d 289 (2003); cf. *Pepe* v. *New Britain*, 203 Conn. 281, 287–88, 524 A.2d 629 (1987) (requirement under Practice Book § 155, now § 10-42, mandatory); *Hughes* v. *Bemer*, supra, 200 Conn. 402 (same).

[5] General Statutes § 46b-59 provides: "The Superior Court may grant the right of visitation with respect to any minor child or children to any person, upon an application of such person. Such order shall be according to the court's best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable, provided the grant of such visitation rights shall not be contingent upon any order of financial support by the court. In making, modifying or terminating such an order, the court shall be guided by the best interest of the child, giving consideration to the wishes of such child if he is of sufficient age and capable of forming an intelligent opinion. Visitation rights granted in accordance with this section shall not be deemed to have created parental rights in the person or persons to whom such visitation rights are granted. The grant of such visitation rights shall not prevent any court of competent jurisdiction from thereafter acting upon the custody of such child, the parental rights with respect to such child or the adoption of such child and any such court may include in its decree an order terminating such visitation rights."

[6] The defendant also did not object to the plaintiffs' failure to file an opposition to her motion to dismiss. See footnote 4.

[7] I do not mean to suggest that the parties may stipulate to subject matter jurisdiction. It is often stated that "[t]he parties cannot confer subject matter jurisdiction on the court, either by waiver or by consent." (Internal quotation marks omitted.) *ABC, LLC* v. *State Ethics Commission*, 264 Conn. 812, 823, 826 A.2d 1077 (2003); see also *Kozolowski* v. *Commissioner of Transportation*, 274 Conn. 497, 502, 876 A.2d 1148 (2005); *Webster Bank* v. *Zak*, 259 Conn. 766, 774, 792 A.2d 66 (2002). In other words, although parties may stipulate to facts that would support a determination in favor of jurisdiction, they cannot directly agree to confer jurisdiction on the court. See generally *Fox* v. *Zoning Board of Appeals*, 84 Conn. App. 628, 637, 854 A.2d 806 (2004). In the present case, the parties merely agreed to allow the record to be supplemented so that it could be determined if the court had jurisdiction pursuant to *Roth*.

[8] See footnote 14.

[9] The defendant's counsel objected to this testimony on the ground that it called for a legal conclusion. The court overruled the objection and allowed the statement to be introduced into evidence.

[10] Gene Fennelly further indicated that he supplied Stephen Fennelly and the defendant with two separate payments of approximately $20,000 in order for them to purchase two houses. He also provided financial assistance when it was needed.

[11] Stephen Fennelly also encountered certain legal difficulties, including violation of restraining orders.

[12] The issue of whether the plaintiffs have met the first part of the *Roth* test presents an interesting and difficult question. Some of the facts adduced at the evidentiary hearing strongly support a parent-like relationship, particularly with respect to Ciara. Even if I were to assume arguendo that such a relationship did exist, it is not clear what effect the defendant's termination of contact between the minor children and the plaintiffs should have with respect to whether such a relationship had ended. It is anomalous to penalize grandparents or other relatives, who may have had the required relationship in the past, for being unable to continue it when a parent, for whatever reason, has terminated contact between relative and child. Because, however, the present case may be resolved on the basis of the second *Roth* requirement, I leave the resolution of this extraordinarily difficult legal question for another day.

[13] The practical difficulties of producing evidence of *Roth* type of harm in situations in which a parent has effectively prevented close relationships from continuing are obviously highly problematical and beyond the limits of judicial resolution.

[14] Sharon Fennelly and Ericsson also testified that at one point, they

noticed “handprint marks” on her arm. There was absolutely no evidence, however, connecting the mark to the actions of the defendant.