

IN THE UTAH COURT OF APPEALS

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Harlan Ashby,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Plaintiff and Appellant,	)		
	)	Case No. 20050658-CA	
v.	)		
	)		
Board of Education and South	)	F I L E D	
Sanpete School District,	)	(September 8, 2006)	
	)		
Defendants and Appellees.	)	<table border="1"><tr><td>2006 UT App 366</td></tr></table>	2006 UT App 366
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Sixth District, Manti Department, 010600224  
The Honorable David L. Mower

Attorneys: Randall C. Allen, Cedar City, for Appellant  
Mark L. Shurtleff and J. Clifford Petersen, Salt Lake  
City, for Appellees

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Before Judges Bench, Billings, and McHugh.

BENCH, Presiding Judge:

Harlan Ashby appeals the trial court's dismissal of his breach of an employment contract claim. Ashby argues that the trial court erred in granting Defendants' motion for an involuntary dismissal before the conclusion of Ashby's case-in-chief.<sup>1</sup> We agree.

Rule 41(b) of the Utah Rules of Civil Procedure states, in pertinent part:

After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence the defendant . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

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<sup>1</sup>Although the trial court labeled the dismissal as a directed verdict, a rule 41(b) motion in a bench trial is considered a motion for involuntary dismissal. See Utah R. Civ. P. 41(b).

Utah R. Civ. P. 41(b) (emphasis added). Under this rule, Defendants may move for a dismissal only after Ashby has completed the presentation of all his evidence. Therefore, the trial court erred in prematurely dismissing Ashby's claim before he had "completed the presentation of his evidence." Id.

Defendants contend that Ashby admitted he misrepresented his educational background, and that any resulting error from the premature dismissal is therefore harmless. We disagree. An "admission" is a "voluntary acknowledgment of the existence of facts relevant to an adversary's case." Black's Law Dictionary 48 (7th ed. 1999). After reviewing the transcripts, we find no such acknowledgment by Ashby of any misrepresentation. In fact, there remain disputed issues of fact as to whether Ashby admitted to any culpable conduct that resulted in his termination.

We reverse the rule 41(b) dismissal and remand the case for further proceedings.

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Russell W. Bench,  
Presiding Judge

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WE CONCUR:

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge