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CLERK *L. J. Lane*

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NO. 16391

84454

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

ORRIAN C. TALLCOTT,  
PLAINTIFF,

VS.

DALTON WILSON and  
PENELOPE A. WILSON,  
DEFENDANTS.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND JUDGMENT

The above action, being at issue on the Complaint of the Plaintiff and the Answer of the Defendant, came on regularly for trial, commencing on the 23rd day of April, 1982. The Plaintiff was represented by his attorney, ANDREW J. PUCCINELLI of PUCCINELLI & PUCCINELLI, P.C., Elko, Nevada. Defendant, DALTON WILSON, represented himself at the trial. Defendant, PENELOPE A. HULL, formerly PENELOPE A. WILSON, was not represented at the trial and presented no evidence.

FINDINGS OF FACT

I.

Plaintiff, ORRIAN C. TALLCOTT, is a resident of Eureka County, Nevada. Defendant, DALTON WILSON, is a resident of Eureka County, Nevada. Defendant, PENELOPE A. HULL, formerly PENELOPE A. WILSON, was, at all times material herein, a resident of Eureka County, Nevada, although she now resides in the State of Idaho.

II.

During April, 1976, Plaintiff, ORRIAN C. TALLCOTT, (hereinafter referred to as TALLCOTT), contracted with Defendant, DALTON A. WILSON (hereinafter referred to as WILSON), to perform

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1 certain leveling and grading of land on real estate farm land  
2 owned by Defendant WILSON, and Defendant WILSON agreed to pay  
3 Plaintiff TALLCOTT certain rental fees for the use of TALLCOTT's  
4 equipment (See Defendant's Exhibit A).

5 III.

6 Plaintiff TALLCOTT completed the land leveling and grading,  
7 pursuant to the agreement of the parties, during the month of  
8 June, 1976.

9 IV.

10 Plaintiff TALLCOTT did not receive any payment for his work  
11 completed for Defendant pursuant to the agreement. Thereafter, on  
12 or about January 1, 1977, Defendants, DALTON WILSON and PENELOPE  
13 A. HULL, formerly PENELOPE A. WILSON, executed a promissory note  
14 in the amount of \$10,850.84. (See Plaintiff's Exhibit No. One) The  
15 note was payable to Plaintiff, ORRIAN C. TALLCOTT, and was due on  
16 or before December 1, 1977, and was given to Plaintiff TALLCOTT,  
17 in lieu of immediate payment under the agreement. All parties  
18 agreed, at that time, that this was the amount due and owing to  
19 Plaintiff TALLCOTT, for his work in leveling and grading  
20 Defendants' land and for the rental of Plaintiff's equipment.

21 V.

22 The promissory note delivered by Defendants to Plaintiff, on  
23 or about January 1, 1977, provided for interest at the rate of 13%  
24 per annum from the date the note was made until paid.

25 VI.

26 The promissory note further provided that, in the event it is  
27 placed with an attorney for collection or if suit is instituted  
28 for its collection, then Defendants, DALTON WILSON and PENELOPE A.  
HULL, formerly PENELOPE A. WILSON, are responsible for paying a  
reasonable attorney fee incurred in collecting said note.

VII.

The Defendants failed to pay to Plaintiff TALLCOTT the

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1 principal and interest due Plaintiff by December 1, 1977.  
2 Defendants, however, did pay to Plaintiff the sum of \$5,810.00,  
3 which was received by Plaintiff on or about May 4, 1979. This  
4 \$5,810.00 payment was first applied to accrued interest of  
5 \$3,302.99, and the remaining amount of \$2507.01 was then applied  
6 to the principal balance due and owing. Therefore, as of May 4,  
7 1979, there was left a principal balance due and owing to the  
8 Plaintiff of \$8,343.83.

8 VIII.

9 Defendant, DALTON WILSON, thereafter failed to provide any  
10 further payments to Plaintiff, claiming that there were certain  
11 offsets due him for the use of certain equipment and labor.

12 IX.

13 Defendant, DALTON WILSON, has failed to produce any evidence  
14 proving his right to any set-offs.

15 CONCLUSIONS OF LAW

16 I.

17 The promissory note given to Plaintiff by Defendants was  
18 validly signed and executed and was given for proper  
19 consideration.

20 II.

21 As of May 4, 1979, there was a principal balance due and  
22 owing to the Plaintiff of \$8,343.83. Further, there is due and  
23 owing to Plaintiff interest at the rate of 13% per annum from May  
24 4, 1979, until the total sum of principal and interest is paid.

25 III.

26 The Court further concludes that Defendant, DALTON WILSON,  
27 has provided no evidence to support his affirmative defenses that  
28 he is entitled to certain set-offs for work performed by him.

IV.

Plaintiff, ORRIAN C. TALLCOTT, should recover judgment under  
the terms of the promissory note in the amount of \$8,343.83,

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1 together with interest at the rate of 13% per annum from May 4,  
2 1979, which is as of this date, the sum of \$3,239.25, and accruing  
3 at the rate of \$2.97 per day. Plaintiff should recover his costs  
4 of suit incurred herein in the sum of \$67.00, together with a  
5 reasonable attorney fee in the sum of \$1,000.00, to be paid to  
6 Plaintiff's attorney.

7 J U D G M E N T

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be  
9 entered for Plaintiff, ORRIAN C. TALLCOTT, against the Defendants,  
10 DALTON WILSON and PENELOPE A. HULL, formerly PENELOPE A. WILSON,  
11 in the sum of EIGHT THOUSAND THREE HUNDRED FORTY THREE AND 83/100  
12 DOLLARS (\$8,343.83), together with interest thereon at the rate of  
13 13% per annum from the 4th day of May, 1979, until paid. That  
14 Plaintiff should recover his costs of suit incurred herein,  
15 together with a reasonable attorney fee in the sum of \$1,000.00.

DATED this 30<sup>th</sup> day of April, 1982.

STATE OF NEVADA,  
COUNTY OF ELKO.

} ss.

S. J. McDaniel  
DISTRICT JUDGE

I, R. L. KANE, County Clerk and ex-officio Clerk of the District Court of the Fourth Judicial District  
of the State of Nevada, in and for the County of Elko, do hereby certify that the annexed is a full, true and  
correct copy of FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT,

ORRIAN C. TALLCOTT, PLAINTIFF v. DALTON WILSON and PENELOPE A. WILSON,  
DEFENDANTS,  
as the same appears on file and of record in my office.

WITNESS my hand and the seal of said court affixed  
the 28th day of June, A.D., 1982.

R. L. Kane R. L. KANE, Clerk.

By \_\_\_\_\_, Deputy Clerk

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OFFICIAL RECORDS  
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