THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jon Kane, Appellant,

v.

Darien Applegate; Darien E. Applegate Trust; Darien E. Applegate, Successor in Partnership; Big Blue Allure, LLC; Allure Outdoor, LLC; Allure Advertising, LLC; Lamar OCI South Corp.; Lamar Advertising, Defendants,

of which Darien Applegate, individually, and as Trustee of the Darien E. Applegate Trust, and as Successor in Partnership; Big Blue Allure, LLC; and Allure Outdoor, LLC are the Respondents.

Appellate Case No. 2024-002063

Appeal From Charleston County
Jessica Ann Salvini, Circuit Court Judge

Unpublished Opinion No. 2026-UP-420
Heard April 7, 2026 – Filed August 19, 2026

REVERSED

Daniel Scott Slotchiver, of Slotchiver & Slotchiver, LLP, and Jesse Sanchez, of The Law Office of Jesse Sanchez, LLC, both of Mount Pleasant; and Matthew Z. Kelly, of

Oyster Road Law Firm, LLC, of Isle of Palms, all for Appellant.

Jennifer Michelle Houti, of James, McElroy & Diehl, P.A., of Charlotte, North Carolina, for Respondents.

PER CURIAM: Jon Kane filed this action alleging that he and Joe Applegate formed a partnership for the construction and management of an electronic billboard. Following Applegate's death in 2019, Kane claimed Applegate's widow, Darien Applegate, took over management of Applegate's business ventures, including management of the billboard, and eventually sold the partnership property without his knowledge or consent. Kane filed suit seeking a declaration that he and Applegate were equal partners and that the billboard was partnership property. He additionally pled various causes of action related to the sale of the billboard against Darien Applegate, both individually and as Trustee of the Darien E. Applegate Trust, Big Blue Allure, LLC, and Allure Outdoor, LLC (collectively, Respondents).[1] The lower court granted Respondents' motion to dismiss pursuant to Rule 12(b)(6), SCRCP, finding that Kane's claims were time-barred by the statute of limitations. We reverse.

BACKGROUND

The facts of this case, as alleged by Kane in his complaint, are that Kane and Applegate had a longstanding professional relationship that started in 1998. In early 2015, Kane contacted Applegate about collaborating on a billboard venture. The two created a partnership via oral agreement and agreed that Applegate would finance construction of the billboard and once construction costs were paid, the partners would begin splitting profits. That fall, the partners secured a site for the billboard and executed a lease with a landowner previously known to Kane. The lease agreement was between the landowner and Applegate's preexisting company, Allure Advertising, LLC (Allure).

In August of 2016, Kane and Applegate executed Articles of Organization for an entity called Big Blue Allure, LLC (Big Blue Allure). Kane and Applegate were listed as organizers and partners of Big Blue Allure, and both were equally liable

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[1] Kane also sued Allure Advertising, LLC, Lamar OCI South Corp., and Lamar Advertising.

for all debt and obligations. Applegate was listed as the manager. Construction of the billboard was completed in 2017.

Applegate passed away in June 2019, and Darien began managing his business endeavors. Darien told Kane she did not want to make any business decisions about the future until she finished probating Applegate's estate, but the two nevertheless remained in close contact regarding the billboard's management. The two discussed the partnership's bank account, rent payments for the land, and operational matters. Darien referred to the billboard as "our billboard" when communicating with Kane.

After the estate closed in 2020, Kane alleged that Darien made several decisions on behalf of the partnership without Kane's knowledge or consent. First, she removed Kane from the partnership's bank account. Then, she filed paperwork to make herself the Registered Agent of Allure Outdoors, LLC. In December 2021, she executed a transfer and assignment of the land lease for the billboard to Lamar Media Corp. (Lamar) and subsequently filed Articles of Merger to merge Allure Advertising and Lamar. Lastly, according to Kane's complaint, Darien executed a sale of the partnership—including the billboard—to Lamar on or about May 11, 2022. Kane received no compensation for the sale of the partnership or the sale of partnership assets.

Kane filed suit against Respondents on June 23, 2023. Respondents filed a Motion to Dismiss in Lieu of Answer pursuant to Rules 12(b)(6) and 9(b) of the South Carolina Rules of Civil Procedure. Respondents disputed the existence of the partnership and further argued that Kane's claims were time-barred for failure to file a creditor's claim with the probate court in accordance with section 62-3-803(c) of the South Carolina Code (2022). Alternatively, Respondents sought dismissal for failure to file suit before expiration of the statute of limitations. The trial court granted the motion, finding that Kane's claims began to accrue on the date of Applegate's death in June of 2019. Because Kane did not file until June of 2023, the court found the claims were outside of the three-year statute of limitations.

STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). The court must "construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" *Id*. (quoting *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001)).

LAW/ANALYSIS

Kane argues that the court erred in finding that the statute of limitations began to run at Applegate's death. We agree.

South Carolina's Uniform Partnership Act governs the parties' respective rights. *See* S.C. Code Ann. §§ 33-41-10 to -1330 (2006). "A 'partnership' is an association of two or more persons to carry on[,] as co-owners[,] a business for profit . . . ." § 33-41-210.

> [W]here the parties to a contract, by their acts, conduct, or agreement show that they intended to combine their property, labor, skill[,] and experience, or some of these elements on one side, and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners.

Stephens v. Stephens, 213 S.C. 525, 531-32, 50 S.E.2d 577, 580 (1948). "All partners have equal rights in the management and conduct of the partnership business[.]" § 33-41-510(5). "A partner is a co-owner . . . of specific partnership property, holding as a tenant in partnership [with the other partners]." § 33-41-720(1). "[A] partner's right in specific partnership property is not assignable . . . ." § 33-41-720(2)(b).

The death of a partner triggers dissolution of the partnership. § 33-41-930(4). However, "[o]n dissolution[,] the partnership is *not terminated*[] but continues until the *winding up* of partnership affairs is completed." § 33-41-920 (emphasis added). Winding up is "[t]he process of settling accounts and liquidating assets in anticipation of a partnership's or a corporation's dissolution." *Winding up*, *Black's Law Dictionary* (12th ed. 2024). "[O]n the death of a partner his right in specific partnership property vests in the surviving partner . . . and . . . is not subject to dower, curtesy, or allowance to widows, heirs or next of kin." § 33-41-720(2)(d)-(e). "A surviving partner has the right to carry on the partnership business, collect its assets, and pay creditors [to] wind up the partnership business. Of course[,] he is accountable to the personal representative of [a] deceased partner for the latter's share of surplus assets." *Crews v. Sweet*, 125 S.C. 303, 306, 118 S.E. 613, 613-14 (1923).

Partnership property does not ordinarily pass through a deceased partner's estate. *See* § 33-41-720(e) ("[A] partner's right in specific partnership property is not subject to dower, curtesy or allowances to widows, heirs[,] or next of kin."); *see also* S.C. Code Ann. § 62-1-201(35) (2022) (omitting partnership property in the definition of "probate estate"). Instead, at one partner's death, "[t]he surviving partner immediately becomes a trustee of the entire partnership property, for the purpose of liquidating the affairs of the partnership . . . and distribut[ing] the remainder of the estate between the surviving partner and the representative of the deceased partner according to their respective interests." *Schnek v. Lewis*, 125 S.C. 228, 242, 118 S.E. 631, 636 (1923).

Kane argues that the trial court conflated dissolution of the partnership with termination. We agree. If we take the allegations in the complaint as true, as we must in a Rule 12(b)(6) motion, then the partnership property vested in Kane at Applegate's death and would not have been an asset of Applegate's estate or subject to creditor's claims. Although Applegate's death would have triggered dissolution of the partnership, the Uniform Partnership Act contemplates there will be some period of time during which the surviving partner will wind up the partnership affairs and then account to his partner's estate for the deceased partner's interest. Again, taking the allegations in the complaint as true, the statute of limitations would not begin to run at Applegate's death, but at such time as Darien took some action that was contrary to Kane's rights in the partnership property.

In addition, the record is silent at this early stage of the lawsuit on crucial information such as whether Darien was acting as the personal representative of the estate and whether the billboard was listed as an estate asset. We therefore find it was error to hold that the statute of limitations on Kane's claims began to run upon Applegate's death.

Because we reverse on the above grounds, we need not address Kane's remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) ("[An] appellate court need not address remaining issues when disposition of prior issue is dispositive.").

CONCLUSION

The court's dismissal of Kane's claims pursuant to Rule 12(b)(6) was premature. Kane alleged that a partnership existed between Applegate and himself. While Applegate's death would have triggered dissolution of the partnership, dissolution is not synonymous with termination and dissolution alone would not have triggered the statute of limitations. Assuming Kane's allegations as true, the partnership property would have vested in him by operation of law at Applegate's death, giving him control and authority over the winding up of the affairs of the partnership. The statute of limitations would not begin to run against Kane until Darien took some action contrary to his partnership rights. We therefore reverse.

REVERSED.

GEATHERS, HEWITT, and CURTIS, JJ., concur.