

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

ROBERT A. GOERING, TREASURER, HAMILTON COUNTY, OHIO,	:	APPEAL NO. C-190312 TRIAL NO. A-1305005
Plaintiff-Appellant,	:	<i>JUDGMENT ENTRY</i>
vs.	:	
RICHARD LEE GILL, Heir of James Gill, Deceased,	:	
JANE DOE, Unknown Spouse of Richard Gill,	:	
ANDREA MATTHEWS, Heir of James Gill, Deceased,	:	
JOHN DOE, Unknown Spouse of Andrea Matthews,	:	
DARRELL GILL, Heir of James Gill, Deceased,	:	
JANE DOE, Unknown Spouse of Darrell Gill,	:	
ELTON HOSKINS, Heir of James Gill, Deceased,	:	
JANE DOE, Unknown Spouse of Elton Hoskins,	:	
UNKNOWN HEIRS, LEGATEES, DEVISEES, BENEFICIARIES AND ASSIGNS OF JAMES GILL,	:	
STATE OF OHIO,	:	
HAMILTON COUNTY CHILD SUPPORT ENFORCEMENT AGENCY,	:	
TRACY WINKLER, Clerk of Courts,	:	
Defendants-Appellees.	:	

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We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This appeal arises from the trial court’s denial of plaintiff-appellant Hamilton County Treasurer Robert Goering’s motion for forfeiture and disbursement of excess funds resulting from a tax foreclosure. We affirm.

In 2013, Goering filed a complaint for foreclosure and sale of real estate based on delinquent taxes that James Gill owed on a vacant plot of land he owned in Cincinnati, Ohio. As James Gill had died in 2012, within the complaint, Goering named individuals and entities with a purported interest in the land, including James Gill’s son, Richard Gill. Richard Gill was the only heir to respond to Goering’s complaint—he filed a motion entitled “More time and hearing.”

In 2014, Goering obtained a summary judgment for the tax foreclosure, and in early 2015 the court ordered the property to be sold at a sheriff’s sale in satisfaction of Goering’s judgment lien. On April 3, 2015, an entry of notice of publication regarding the pending foreclosure was filed. Within the notice, the last owner’s name was listed as Richard Gill. On April 16, 2015, the property sold at the sheriff’s sale for \$11,500. The order for sale was returned and filed that same day, and within the order the last owner’s name was again listed as Richard Gill.

The court confirmed the sale on June 1, 2015, and entered a decree of distribution on August 11, 2015. The court ordered the sheriff to pay \$4,983.81 to the treasurer to satisfy the outstanding property taxes, \$1,725.86 to the clerk of courts for court costs, and the balance of \$4,790.33 was ordered to be held by the clerk of courts until further order by the court. Thereafter, notices entitled “Notification of Judgment Debtor” were sent to the known and unknown heirs of

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James Gill, including Richard Gill. The notices were sent pursuant to R.C. 2329.44 and indicated that the clerk of courts was holding excess funds from the sheriff's sale to which the recipients of the notices might be entitled.

On July 18, 2018, Richard Gill filed a motion for "Distribution of Funds Being Held by the Clerk and Notice of Hearing," in accordance with the notice he received. Within the motion, Richard Gill asserted that he was entitled to excess proceeds from the sheriff's sale as an heir to James Gill. Gill was the only individual to respond to the notices sent by the clerk of courts. On August 1, 2018, a hearing was held on Richard Gill's motion. The magistrate informed Richard Gill at this hearing that he was required to open a probate estate for his father, James Gill, in order to receive the funds.

On August 21, 2018, Goering filed a motion for an "Entry of Forfeiture and Order of Disbursement of Residue and Excess Moneys from Tax Foreclosure." Goering asserted that he was entitled to the money pursuant to R.C. 5721.20 because "neither the proper owner nor any other party" had made a demand for the money.

In September 2018, a magistrate denied Goering's motion, finding that Richard Gill had made a timely demand for the excess funds. Goering objected to the magistrate's decision. In April 2019, the trial court overruled Goering's objections and adopted and affirmed the magistrate's decision. The trial court awarded the excess funds to the administrator of the estate of James Gill, Philomena Ashdown, who is also counsel for Richard Gill.<sup>1</sup>

Goering now appeals, asserting two assignments of error. In his first assignment of error, he argues that the trial court erred in denying his motion for forfeiture and disbursement of the excess funds. In his second assignment of error,

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<sup>1</sup> Gill did not object to this determination. Thus, we do not address whether requiring Gill to open an estate and distributing the funds to the administrator was proper.

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he argues that the trial court erred in concluding that the administrator of the estate of James Gill made a timely application for the excess funds.

Goering primarily argues that the owner did not demand payment, and thus, pursuant to R.C. 5721.20, Goering was entitled to the funds. We disagree. Richard Gill was treated by Goering as the owner of the foreclosed property throughout the proceedings. For example, Richard Gill was named as the “last owner” of the property in the notice of the pending foreclosure and order for sale, and was presumed to be the owner in Goering’s own motion for forfeiture and distribution—wherein Goering admitted that the funds were held on deposit in Richard Gill’s name, as an heir to James Gill. Furthermore, Richard Gill made a demand for the excess funds within three years of the trial court’s order of distribution of the funds from the tax foreclosure, in accordance with R.C. 5721.20. Accordingly, under the limited and narrow facts of this case, we overrule Goering’s first assignment of error.

Goering’s second assignment of error is overruled because the trial court did not make a finding on whether the administrator’s application was timely. The trial court simply awarded judgment to the administrator and Goering does not challenge that award within his assignment of error. *See Blue Ash Embassy Assoc. v. Hamilton Cty. Bd. of Revision*, 1st Dist. Hamilton No. C-920674, 1993 WL 489488 (October 20, 1993), citing App.R. 12(A)(1)(b) (the intermediate appellate courts of this state are only required to answer assignments of error). The judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**ZAYAS, P.J., MYERS and BERGERON, JJ.**

To the clerk:

Enter upon the journal of the court on August 12, 2020

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per order of the court \_\_\_\_\_.  
Presiding Judge