STATE OF MICHIGAN

COURT OF APPEALS

SUSAN MORGAN, Plaintiff-Appellant,	UNPUBLISHED October 27, 1998
v MICHIGAN DEPARTMENT OF SOCIAL SERVICES, MICHIGAN DEPARTMENT OF CIVIL SERVICE, JAMES QUIGLEY, and BARBARA SMALLEY, Defendants-Appellees.	No. 191045 Ingham Circuit Court LC No. 94-015526 CM

Before: Talbot, P.J., and McDonald and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition under MCR 2.116(C)(10) regarding her claims that defendants violated her constitutional right to due process of law by failing to promote her. We affirm.

I

Plaintiff first argues that the trial court erroneously followed the opinion of Justice Boyle in *Smith v Dep't of Public Health*, 428 Mich 540, 637-658; 410 NW2d 749 (1987), aff'd sub nom *Will v Dep't of State Police*, 491 US 58; 109 S Ct 2304; 105 L Ed 2d (1989). Plaintiff argues that the court instead should have followed the opinion of Justice Archer in *Smith.* Plaintiff's argument is unpersuasive.

The relevant portions of Justice Boyle's and Justice Archer's opinions in *Smith* are as follows:

> [Boyle, J.] For "constitutional torts," liability should only be imposed on the state in cases where a state "custom or policy" mandated the official or the employee's actions.
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> * * *

> Liability should be imposed on the state only where the action of a state agent "implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." [*Id.* at 642-643.]
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> [Archer, J.] We would not, however, limit [this holding] to a determination of whether the alleged constitutional violation occurred by "virtue of a governmental custom or policy" or whether a "damage remedy is proper," and do not agree those limitations should be imposed on a remedy for constitutional violation." [*Id.* at 658.]

Several panels of this Court have cited Justice Boyle's opinion in holding that suits against governmental employees for alleged constitutional torts should be allowed only when the targeted employees were carrying out a governmental "custom or policy." See e.g., *Carlton v Michigan Dep't of Corrections*, 215 Mich App 490, 504-505; 546 NW2d 671 (1996); *Johnson v Wayne Co*, 213 Mich App 143, 150; 540 NW2d (1995); *Marlin v City of Detroit (After Remand)*, 205 Mich App 335, 338; 517 NW2d 305 (1994). Notwithstanding the fact that Justice Boyle's opinion in *Smith*, *supra* at 642, does not represent binding authority because it was not a majority opinion, we conclude that the adoption of this opinion in subsequent cases *does* represent binding authority. MCR 7.215(H). Therefore, the trial court properly relied on Justice Boyle's *Smith* opinion in making its summary disposition ruling.

II

Plaintiff next contends that even if Justice Boyle's "custom or policy" requirement were applicable, defendants may still be held liable because they acted pursuant to two policies, a policy allowing two-person interview panels and a policy allowing interviewers with spouses seeking the position to participate on those panels. We disagree.

This Court has stated that as "a matter of pure logic, a single incident does not a custom, policy, or practice make." *Sudul v Hamtramck*, 221 Mich App 455, 469; 562 NW2d 478 (1997). Viewing the evidence in a light most favorable to plaintiff, *Donajkowski v Alpena Power Co*, 219 Mich App 441, 46; 556 NW2d 876 (1996), we find that reasonable minds could not conclude that defendant Smalley's participation as a member of plaintiff's interview panel was pursuant to a custom or policy. With regard to the two-person panel "policy" alleged by plaintiff, we note that plaintiff failed to provide any factual support for the proposition that using two-person interview panels was customary. Accordingly, we find that summary disposition was appropriate.

III

Finally, even if we were to accept as true plaintiff's assertion that Smalley acted pursuant to a state "custom or policy," plaintiff has failed to establish that such a custom or policy deprived her of a property interest. To establish a constitutionally protected property interest, "a person

must have more than just a need, desire for, or a unilateral expectation of [a] benefit." *St Louis v Michigan Underground Storage Tank Financial Assurance Policy Bd*, 215 Mich App 69, 74; 544 NW2d 705 (1996). Here, the promotion to area manager merely represented an expectation to plaintiff and was not a protected property interest.

Affirmed.

/s/ Michael J. Talbot
/s/ Gary R. McDonald
/s/ Janet T. Neff