

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----  
VINCENT D. WHITAKER,

Plaintiff,

v.

JON E. LITSCHER;  
MICHAEL CATALANO;  
PRISON HEALTH SERVICES, INC.;  
PAM BARTELS;  
JOHN DOES 1, 34, 35, 36, 37, 39, 82, 84, A, D and E;  
and GERALD A. BERGE,

Defendants.  
-----

ORDER

04-C-165-C

Plaintiff Vincent D. Whitaker has filed a motion for a stay of this action pending disposition of Jonathon P. Cole's appeal in Cole v. Litscher, 04-C-116-C. In a separate order entered today in case no. 04-C-116-C, I construed Cole's notice of appeal as a motion to modify the March 15, 2004 severance order entered in that case to include a finding that the order is appealable pursuant to 28 U.S.C. § 1292, and I denied the motion. In addition, I denied as moot plaintiff Cole's motion for a stay of the proceedings pending appeal.

Plaintiff Whitaker has not filed a notice of appeal from the March 15 order. Even

if he had, it, too, would have been construed as a motion for modification of the March 15 order and would have been denied. First, plaintiff Whitaker makes no argument suggesting that it was legal error to sever the individual claims of the co-plaintiffs named in the amended complaint in case no. 04-C-116-C. Second, he suggests no reason why he cannot proceed on his claims in this lawsuit. He has not incurred a separate filing fee by virtue of the severance order and the order does not prohibit him from seeking help from other inmates or a lawyer in prosecuting his claims. That he and perhaps every other plaintiff who joined with Cole in the original suit may abandon their individual claims for personal reasons now that the action has been severed is not a ground for considering the severance order a final order or for permitting an interlocutory appeal of a non-final order. See Coopers & Lybrand v. Livesay, 437 U.S. 541, 469-476 (“death knell” doctrine insufficient to support appellate jurisdiction of prejudgment decision denying class certification).

#### ORDER

IT IS ORDERED that plaintiff Vincent D. Whitaker’s motion for a stay of this action

pending Jonathan P. Cole's appeal from this court's March 15, 2004 severance order in case no. 04-C-116-C is DENIED.

Entered this 31st day of March, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge